De Juramento.

SEVEN

LECTURES

CONCERNING THE

OBLIGATION

Of Promissory

OATHES.

Read publickly in the Divinity School at *OXFORD.*

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Translated into *English* by His late MAJESTIES speciall Command, and afterwards Revised and approved under His MAJESTIES own hand.

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TO THE READER.

SHould I tell thee no more but the *Authors* Name, and by whoſe Command this Book was made *Engliſh*, 'twere ſufficient Commendation; But

(becauſe I intend not to waſte many words) know, that whether thou be a Ruler, or a Subject, Single, or Marryed, this Book will concern thee; Since thou canſt not make any Oath, Promiſe, or Stipulation, (and thou canſt not quietly live without them) but mayſt here read how far thou ſtand'ſt obliged; So that whether thou loveſt thy own conſcience, or thy Neighbours,

bours, the Author, (and perhaps the Tranſlator have here done thee a courteſie. *Farewell.*

OF THE OBLIGATION OF OATHES.

The first Lecture.

NUMB. 30. 2.

If a man vow a vow unto the Lord, or ſwear an oath to binde his ſoul with a Bond, he ſhall not break his word, he ſhall do according to all that proceedeth out of his mouth.

The Summary.

1. *The things to be handled propoſed.*
2. *The definition of an oath.*

3. *An Oath is a Religious Act.*
4. *In an Oath God is called to witnesse.*
5. *The matter of an Oath is something in doubt.*
6. *The end of an Oath is* credit.
7. *The definition given, containeth all the four kindes of Causes.*
8. *Oaths assertory and promissory.*
9. *Oathes Comminatory.*
10. *Oathes Execratory.*
11. *The definition and distinction of Obligation.*
12. *Obligation to guilt and to punishment.*
13. *An Oath is in the nature of it Obligatory.*
14. *The different obligation of the Assertory, and Promissory.*

SECT.

Sect. I.

I Shall handle this matter with the more expedition, and your better profit, (as I conceive) if in the very entrance I lay before your eyes as it were a generall Map of my future diſcourſe; for ſo both you may better underſtand my deſign, and I more certainly bound my ſpeech; that I may either contain it within the due compaſſe, or if it chance to ſtart out a little, it do not ſo looſly wander, but that it may be maturely brought in order, and reduced unto the point. I ſhall therefore deliver the whole matter under three heads.

Firſt, That it may be the better underſtood of what I ſpeak, I wil ſhew what an *Oath* is in generall, what a *Promiſſory Oath* is in particular, & what *Obligation*. 1.

Then becauſe the determination of uncertain things is to be drawn from ſuch as are certain, I ſhall propoſe certain axioms or generall rules, deri- 2.

ved from the fountains of naturall Law, and confirmed by generall conſent, as *Hypotheſes*, and Touch-ſtones of the future diſquiſition, from whence the deciſions of particular caſes are to be deduced, and to which they are to be brought as unto their rules & Canons. Theſe two neceſſarily premiſed, of which one will give light to that which is to be ſpoken, the other ſtrength and foundation: I ſhall
3. come in the third place to ſalve thoſe doubts, which may have any difficulty in them worthy of debate, or may ſerve to caſt any ſcruple into the mindes and conſciences of pious men; which as it is the principall part of the whole work, and by far the largeſt, I ſhall endevour to bring all the variety of Caſes into certain Claſſes, and that according to the four kindes of Cauſes ſo far as it concerns the bond of obligation; reſerving to the concluſion of the work, both thoſe things which appertain to the ſolution of that bond, and any other which I ſhall either finde to have been omitted in their due place, or judge fit for the better regulation of life, and Conſcience, to be annexed.

SECT.

Sect. II.

THE draught of the whole future treaty thus delineated as in a map, now I betake my ſelf to the matter. Where firſt is to be explained what an Oath is. I ſhall not need to inſiſt upon the name, and the defining thereof: for the ill cuſtome of ſwearing is grown to that paſſe, and the familiar abuſe of this ſo ſacred a thing is ſuch in theſe debauched times, that it can be unknown to no man, nay not unto children, what an Oath is. Authors (as the manner is) variouſly expreſſe the definition of the thing it ſelf, according to their particular fancies. That of *Cicero* is the moſt conciſe, An Oath, ſaith he, is a religious affirmation. Where by the way I both admire and am angry at the forward youths of this age, who I know not out of what erroneous prejudice, but I am confident, to their own great hurt, avoid *Cicero*, as a writer of too much prolixity. But I return: if any man deſire a fuller definition of an oath, let him take this, An Oath is a religious act, by which God is called

to witneſſe for the confirmation of ſome matter in doubt. Every member of this definition I ſhal particularly explain.

Sect. III.

Firſt, I ſay it is a religious act. Act is put as the Genus; for though an Oath be properly in the Predicament of Relation, yet becauſe the relative reſpect which is in an oath is founded upon the act of the party ſwearing, it is not for that reaſon impertinently defined by ſuch an act; for as much as in the definition of Relatives, the matter or ground of that relation is uſually put in for the Genus. Now that it is a religious Act, is manifeſt, firſt, by the authority of Scripture, Deut. 6. 13. *Thou ſhalt fear the Lord thy God, and ſerve him, and ſwear by his name.* From which place the Schoolmen unanimouſly conclude, that an Oath is (to uſe their term) *Cultus latriæ*, that is, an act of ſuch holy worſhip as is due unto God alone.

Secondly, It is manifeſt by the conſent of all Nations, amongſt whom as led

led by one light of nature, the religion of an oath hath been ever held moſt ſacred; inſomuch that the very words, Sanctity, Religion, and others of like ſenſe, are ſcarſe in any other ſo frequently uſed amongſt Heathen writers, as in this matter of Oathes; and though they had many rites amongſt them, which they held ſacred, yet to an Oath only, for no other cauſe then that it was in a manner the moſt holy of their holy things, remained as peculiar right by the name of *Sacrament*. From whence that name paſſed afterwards into the Church, from ſome ſimilitude with the military Sacrament of the *Romans*, yet to ſignifie ſome other things. The *French* alſo at this day framing the Latine word *Sacramentum* unto their pronuntiation call an oath, *Unſerement*.

Thirdly, it is manifeſt from moſt evident Reaſon: becauſe an Oath tends to the honour of God as being an acknowledgement of his truth, wiſdome, juſtice, and divine power. For although a falſe oath, or an oath lightly, raſhly, or otherwiſe unduly taken, diſcover a certain irreverence to, or rather contempt of God in the party ſwearing;

and favour too much of Atheisme: the act nevertheless of swearing in its own nature implies a reverence of the divine Name. For since every oath is made for confirmation of that which is avouched by the party swearing; and all confirmation ought to be made by something that is most certain, and of greater authority, (Heb. 6. *Men verily swear by the greater*:) He who swears, *ipso facto* acknowledgeth God to be his superior, a witnesse of the highest authority; of infallible truth, the searcher of hearts, and the most just, and powerfull punisher of all perjury and falshood. An oath therefore is a religious act.

Sect. IV.

SEcondly, I say, *In which God is called witnesse*. Wherein are these three things; God called, as a witnesse, and by way of invocation. In all oathes God is chiefly called; for although there was a solemnity heretofore amongst Heathens, Jewes, and Christians of swearing either by Creatures, or at least in swearing not to expresse the name of God, but the names of creatures

tures only, as might if need were be proved by infinite teſtimonies drawn both from Scripture, and other authors, (to diſpute which two things, whether they be, or how far they may be lawfull, is not to the preſent purpoſe) yet in every oath which is truly and formally an oath, the teſtimony of God is either explicitly, or implicitly uſed; for both he who ſweareth by idols, which indeed are nothing, 1 Cor. 8. 4. & Jer. 5. 6. are no Gods, ſwears by thoſe he thinks to be Gods: and he who ſwears by any creature, doth that in ſome ſort in order and relation unto God, becauſe he calleth the creature to witneſſe, as it were ſomething of God, that is to ſay, in which the truth, goodneſſe, and power of God appeareth, and which he both acknowledgeth that by the mercy of God he enjoyeth, and would be loth by the juſtice of God to be deprived of For example; if a man ſwear by his life, by his ſoul, by his head, by his ſalvation, &c. it is as much as if he ſhould ſay, by that God to whom I owe my life, my ſoul, my head, from whom I expect ſalvation, &c. And in this particular is the difference between an Oath, and bare

bare assertion or promise, which two men make without any interposition of the divine Name, either expresse or tacite. Now in that God is called to witnesse, therein an oath is distinguished from a Vow; for in a Vow God himself is contracted withall as a party, to whom vowes are immediately addressed. But man is contracted withall in an oath, and God brought in not as a party, but witnesse. Now in the definition I have said God to be witnesse simply and precisely, not a judge and revenger; which nevertheless is added by some indeed truly, but perhaps not necessarily; and no superfluous thing should be brought into a definition. I confesse he who swears doth both adduce God witnesse of truth, and avenger of falshood; but that primarily, and *per se*, this secondarily, and by consequence. For that God be witnesse unto truth, appertaineth simply to the nature of testimony: but that he punish falshood, concerns not so much the nature of testimony, as the effect. But neither is it sufficient unto an oath, that God be made the witnesse, except he be also invocated; for God may be brought

brought a witneſſe, and that for the confirmation of a doubtfull thing too, even without an oath. As if for the confirmation of this Theſis, Images are not to be adored, I ſhould alledge ſome places out of Scripture; certainly this were to adduce the teſtimony of God for confirmation of a thing in doubt, and yet as certainly this were no oath; for it is quite another matter to cite God a witneſſe in reſpect of a teſtimony already given, which may be done without invocation; and to invoke God a witneſſe with reſpect unto a teſtimony now to be exhibited, wherein the formality of an oath conſiſteth.

Sect. V.

THirdly, I ſaid, and it is the laſt member of the definition, that God is invoked a witneſſe for the *confirmation of ſome matter in doubt.* In which words is contained both the end, and matter, or object of the oath. The *materia circa quam*, or object of an oath, is a Doubtful thing; that is, whoſe certitude ſo depends upon the credit of the ſpeaker, that it can be no other way con-

conveniently found out. Wherefore firſt, the *Scibilia*, of which kinde univerſall things be, which are ever certain and like themſelves, nor can be otherwiſe; Secondly, particular things which reſt upon the teſtimony of ſenſe, which are either ſo clear and certain in Hiſtory, univerſall tradition, or other publick teſtimony, free from all ſuſpicion of falſhood, that they can leave no occaſion of doubt with men of ſound mindes; are no fit matter for oathes. For how ridiculous were it, and unbeſeeming a ſober man to confirm by an oath, that a triangle hath three Angles; or that vertue is deſirable for it ſelf; or that *Ariſtotle* was a Philoſopher; or that *Cicero* an Orator; or that a youth diſputing in the Schools, and being to prove a propoſition denied, ſhould lay arguments aſide, and ſwear it to be true? Wherefore particular things, ſuch as are facts of peculiar perſons with their circumſtances, which for the various chances, and contingencies whereunto they are obnoxious, are ſo mutable, and doubtfull, that no certainty thereof can be had by way of demonſtration, or other, except that which

which depends upon the credit of men: are those things, unto the confirmation whereof, oathes are properly of use: which the Apostle intimates in that Heb. 6. *An oath is the end of all contradiction.* As if he should say, an oath is there to take place where there is no end of contradiction; one, imagine the Plaintiffe, affirming; the other, imagine the Defendant, denying: except by the interposition of an oath, one part of contradiction being confirmed, the other part cease, and the whole strife be determined.

Sect. VI.

And this Confirmation (the Apostle in the place mentioned cals it βεβαίωσιν) is the true end of an oath. For since particular things would be uncertain, and through their contingency doubtfull, nor could be proved but by witnesses, and all humane testimony would be infirm and fallible, especially through two defects; one of knowledge, (for we are ignorant of very much) the other of conscience, (every man being a lyer) and yet it would make for mens con-

convenience that the things in controverſie amongſt them, and mutually debated, ſhould be reduced to ſome certainty, without which there would be amongſt men no faith, nor juſtice, which are the moſt firm bonds of humane ſociety; there lyeth a neceſſity of flying to the teſtimony of God, who can neither deceive nor be deceived. And thus oathes are received by all nations from divine inſtitution, or the law of nature, as a fit remedy for this diſeaſe. In the judgement of all men, μεγίστη παρ' ἀνθρώποις πίστις, ſaith *Diodorus Siculus*, and *Dionyſius Halicarnaſſeus*, πλεόνεξία πίστις: And the Apoſtle greater, and more elegantly then, both πάσης ἀντιλογίας πέρας, *an end of all ſtrife*, Heb. 6. When we arrive once at this point, *Ne plus ultra*; all humane diſpute and contradiction muſt reſt here. Not that every thing confirmed by an oath is ſimply certain (for then there would be no perjury, which alas is too common) but becauſe in this condition of mortality (wherein it ſeemeth unto divine wiſdome profitable for mankinde that they ſhould be converſant with much obſcurity and incertainty of

things, to the end that their mindes may be raiſed unto the things above which are more certain) there can be no greater humane faith then that which in an oath, by the invocation of the name of God, is as it were atteſted and confirmed from heaven.

Sect. VII.

IN this definition of an Oath examined as you have heard, are in ſome ſort contained all the cauſes of oathes. That firſt member in which it is ſaid to be a religious Act, to wit, of him who ſweareth, neceſſarily includeth the will of the Agent, that is to ſay, of the party ſwearing; (ſeeing every man is a free agent, and every humane act voluntary) as the primary Efficient cauſe. The ſecond member expreſſeth the Formall cauſe of an oath, which is the atteſtation of the divine Name, or *invocation of God as a witneſſe*. The third member contains the other two cauſes, to wit, the Materiall and Finall. For the proper Matter of an Oath is the thing in doubt; that is, the truth whereof is

not

not sufficiently confirmed to him, before whom it is pleaded, by the bare testimony of the assertor; and the proper Finall cause of an oath is, that a doubtfull matter may have that certainty through invocation of divine testimony, then which no greater can be had in the contingency of humane affairs. This which I have said, Auditors, is to the end it may render me the more excusable unto you for the prolixity I have used in explaining the definition of an Oath. Because when with the help of God I come to state dubious cases, which I intend to do with respect unto the four kindes of causes, I doubt not but you will then easily perceive, how profitable it will be to the studious, and advantagious unto my purpose, to have had a foreknowledge of these things, which concerning the nature of oathes have been by me so largely handled.

SECT.

Sect. VIII.

But thus much of Oathes in generall, what a *Promissory Oath* is in particular comes in the next place, but more briefly to be explained. Sundry divisions and distinctions of oathes according to the diversities they respect are extant in Divines and Lawyers: by some they are divided into Judiciall and Extrajudiciall; by some into publick, and private; into simple, and solemn; into naked, and execratory; into absolute, and conditionall; by others, otherwise. But the noblest of all, and that which (as I remember) is not by any of them who have written of oathes, omitted, is that whereby they are distinguished into *Assertory* and *Promissory*. For whereas in every oath (as hath been said) the name of God is taken by the party swearing by way of invocation unto the testimony of some doubtfull matter, it is to be observed, that this may be done three waies. For a *past* matter may be doubted whether it were so, or not so: as, did you see *Caius* yesterday in the market-

place or no? or a *preſent* one, whether it be ſo or not; as, have you the money I left in your hands, or have you it not? or a *future* one, whether it will be ſo or not: as, will you lend me an hundred pound to morrow, or will you not? So often therefore as God by an oath is invoked witneſſe to a thing paſt or preſent, ſuch an oath is uſually called *Aſſertory*; Becauſe the party ſwearing without any promiſe for the future, only aſſerts the thing to have been, or to be as he then ſweareth. But if God by the interpoſition of an oath be invoked witneſſe to a future thing, that oath is called *Promiſſory*, becauſe the party ſwearing promiſeth to performe ſomething, or not to perform it hereafter. The chief uſe of the Aſſertory is in judicature to determine ſuits, eſpecially upon the queſtion of fact. There is ſmall uſe of the Promiſſory in judicature, but very much in promiſes, bargains, contracts. Many examples of this kinde of oath are found in ſacred ſtory, and elſewhere. The ſervant
Gen. 24. 9 of *Abraham* devoutly ſweareth faithfully to obſerve his Lords commands in the choice of a wife for his maſters

ſon

ſon. *Joſhua* and the princes of the people of Iſrael ſwear, but inconſiderately, to obſerve the League with the Gibeonites. King *Herod* ſware, but very raſhly, to give unto the daughter of *Herodias* whatſoever ſhe ſhould aske. Josh. 9. 15. Mat. 14. 7.

Sect. IX.

FUrthermore it is to be advertiſed, that under the title of an oath Promiſſory, is alſo comprehended the *Comminatory*; ſuch as was the raſh oath of *David* for the deſtruction of *Nabal*, and the impious one of certain Jewes, who vowed that they would neither eat nor drink till they had killed *Paul*. Theſe and ſuch like are not properly *Promiſes*, which word ſeems rather to ſignifie ſomething that may be gratefull unto another, but by a kinde of Synecdoche joyned with a Catachreſis (which as it is otherwiſe familiar amongſt good Authors, ſo eſpecially in words which reſpect ſome future thing; as *ſperare* for *timere*, and the like) the name of *Promiſes* may Metaleptically be extended to *Comminations*. So Gods Oath, whereby he ſware in his wrath

that the Iſraelites, who had tempted him with divers provocations in the wilderneſſe, ſhould not enter into his reſt, may and uſeth no leſſe to be called promiſſory (though not ſo properly) then the other of his whereby he ſware unto their fathers that he would give them the land of *Canaan* for an heritage.

Sect. X.

NEither is it materiall to the nature or effect of a promiſſory oath, whether the oath be *barely* expreſſed, or *with an execration added*; for although there be ſome of the Schoolmen, unto whom that oath which is made by a *ſimple* calling to witneſſe, ſeems to differ in ſpecie, from that which is done with an *execration added*, they being induced unto that opinion for this reaſon, that God is invoked by that as a witneſſe, by this as a judge; yet if we more attentively conſider the matter, we ſhall finde by what hath been ſaid, that they come both to one. For every oath in what manner ſoever uttered, whether barely, or with ex-

execration, either expreſly, or at the leaſt implicitly, invoketh God both as a Witneſſe and Judge, but primarily and *per ſe* as a Witneſſe; ſecondarily and conſequently as a Judge; and that is the moſt explicate form of an oath, whereby God is both explicitly called to witneſſe, and whereunto an execration, or imprecation is annexed: as if a man ſhould ſwear thus, I call God to witneſſe, who confound me if I do it not, that I will do this or that. But ordinarily either this or that part is omitted, and oathes are more ſuccinctly given, as by thoſe examples in holy Scripture where God is introduced ſwearing after the manner of men, is ſufficiently manifeſt. There you may finde God ſwearing ſometime by a ſimple atteſtation without any execration, as in theſe, *As I live, ſaith the Lord, I have ſworn by my ſelf, by my holineſſe, &c.* ſometimes without any atteſtation, by an execration only, but that too, (for the honour and reverence of ſo great a Majeſty, and after the manner of men almoſt ſuppreſſing by an *Aposiopeſis*, words of ill omen) elliptically and diminutely uttered; as in that of the

Psal. 95. Psalme, *I sware in my wrath, if they enter into my rest.* This in the mean time seemeth certain, that every promissory oath under what forme soever conceived, brief, or large, so it be an oath, and no mere *Asseveration* or *Obtestation*, virtually containeth both, that is to say, Attestation, and Execration. For in an oath both *Execration* supposeth Attestation as a thing before it in nature, and *Attestation* inferreth Execration as its necessary consequent. That of *Plutarch* is pithy, πᾶς ὅρκος εἰς κατάραν πελάζει τὴν ἐπιορκίας, *Every Oath concludeth with a curse of perjurie.* And thus much for the nature of a Promissory Oath.

Sect. XI.

IT remains that in the last place I adde something of the nature and force of *Obligation.* Of obligation Lawyers say much and with prolixity enough: they define it to be a Bond of Law, whereby a man is bound to pay that which he oweth. Which definition will be no lesse fit to explain those things which are internall, and appertain unto the Court of Conscience, then those which are externall, and appertain

tain to the Court of Judicature, whether in Church or in Common-wealth; if the terme of Law be not restrained to that which is humane, and positive only, but so extended, as it take in also universal Law divine and naturall. Now since every obligatory Bond, as may be gathered from the definition, derives it self from some Law, as the *Law* is twofold, the one part divine and naturall, the other civill and humane; so the *bond* or *obligation* arising from thence is also twofold; to wit, the *naturall Bond* which obligeth naturally, and in *foro externo*, by the vertue of divine Law; and the *civill Bond* which obligeth civilly, and in *foro externo*, by vertue of humane Law. Some call that *the obligation of equity*, this *the obligation of justice*; whether properly or improperly, I dispute not: for where we agree in the thing, to what purpose were it to contend about the terms? But whereas they adde a third kind of Obligation, compounded of the former two, that certainly is not very convenient, or at the least not necessary: For if a man be bound to the performance of the same duty (as for example, to

ſeed his aged parents) both by naturall Law, and Civill; this would be no new ſpecies of obligation mixed of the other two, but rather two obligations conjoyned, both in the *ſubject*, and *object*, (in the ſubject, for as much as they binde the ſame perſon; and in the object, foraſmuch as they binde unto the ſame duty) and yet naturally and originally diſtinct. The reaſon is manifeſt, for things cannot by their mixture produce a new ſpecies, without ſome reall immutation of themſelves. Whence *Ariſtotle* defines *Miſtion*, *Miſibilium alteratorum unionem*. For in all miſtion there muſt be alteration, and every alteration is a reall mutation, as appears in the generation of mixed bodies out of the four elements, not entire, but broken, and altered. But where a new obligation is added unto a former one, as in this caſe, the civill to the naturall, no reall mutation is made of either. But the former obligation remains in the ſame ſtate it was in before the acceſſion of the new and latter. But I will not ſtay upon theſe ſubtleties. In the matter of oathes we conſider the *Morall*, or *Naturall* obligation

ligation only, or at the least especially; the other, the *Civill* we leave to Lawyers.

Sect. XII.

BEsides that distinction of obligation, which ariseth from its *Originall*, in relation unto the *Law* whence it deriveth; there is yet another, taken from the *Object* in relation unto the *Debt* to be paid, at which obligation aimeth, and whereunto it is carryed. Now debts are twofold. *Debitum officii*, according unto which every man is bound, by the precept of the Law to act: and *Debitum supplicii*, according to which every man is bound by the decree of the Law to suffer if he neglect his duty. In the former sense we say that the mutuall exercise of Charity is a debt, because the Law of God enjoynes it, according to that *Rom.* 13. 8. *Owe no man any thing, but to love one another.* In the latter sense we say, that sins are debts, as in the Lords Prayer, *Forgive us our debts*, and that externall death is a debt, according to that Rom. 6. 23. *The wages of sin is death.* Nevertheless it's to be observed, that

that the latter debt is contracted by non-payment of the former. So that if a man fully disingage his *debitum officii*, by obeying what the Law commandeth, he remaineth not bound *debito supplicii*, to suffer that which the Law denounceth. To this twofold debt answereth a twofold *obligation*, of the very same denomination, to wit, obligation *ad officium*, to the performance of duty; and obligation *ad supplicium*, to the sufferance of punishment; or according to the usuall terms, which comes all to one, obligation *to guilt*, and obligation *to punishment*. But so as the former be in the intention of the Law, as it is in its own nature, chief and preferred before the latter; for it is the part of a Tyrant, not of the Law, otherwise to inflict punishment then in relation to guilt: and that speech of the Apostle is true even in this sense, though perhaps more rightly to be understood in another, *The Law is not made for a righteous man*. The Law therefore intendeth primarily, directly, *per se*, and simply, to oblige unto duty, and obedience. But unto chastisement and punishment, it obligeth only secondarily, in-

indirectly, consequently, and *ex hypothesi*, that is to say, supposing the neglect or contempt of duty. The Apostle seemeth to have joyned both these obligations together, in Rom. 13. where he speaks of the subjection due unto the Soveraign power, *Ye must needs* (saith he) *be subject not only for wrath, but also for conscience sake*: from which words I gather three things of concernment to my present intention. The first is, that we may be bound by a double bond to the performance of one and the same thing; by the bond of duty, and the bond of punishment; for this is implyed in the words of *conscience* and *wrath*. The second, that the conscience of duty ought with all good men to be valued, and preferred before the fear of punishment. The third, that the obligation of conscience ariseth precisely out of the debt of duty. Whence also it is manifest, that we, when we speak of the obligation of oathes, as it concerneth conscience, are primarily and especially to be understood of the obligation which bindes us to the performance of Duty, not of that whereby we are bound to suffer the punishment due unto perjury.

SECT.

Sect. XIII.

THese two distinctions of Obligations laid, it is furth rmore to be understood, that every oath is in its own nature binding: insomuch, as if a man should swear without any intention to oblige himself, nay although he should swear with an intention not to oblige himself; nevertheless, the oath taken, he becomes *ipso facto* obliged, as in its place (if it please God that I go so far) I shall more fully shew. *Cicero* saith right, Our Ancestors would have no bond for the obligation of faith, stricter then that of an oath. But what could be more clearly said in this matter, then that which *Moses* saies in the text? *If a man vow a vow unto the Lord, or swear an oath to binde his soul with a bond*: where that gemination after the manner of the *Hebrewes*, hath much emphasis, and fortifies the signification of the words: As *in multiplying I will multiply*; & *in blessing I will blesse*: that is, I will exceedingly multiply, I will greatly bless: so *ligando ligamen*, binding with a Bond, that is, strongly binding; as if he should

should have said, although even a bare promise oblige the conscience, and that with the addition of an asseveration, or obtestation, it oblige more strictly: yet a vow which is made to God, and an oath which is made to men, but with the witnesse of God, are the strongest of all obligations. Wherefore every oath obligeth the conscience, as well the Assertory, as the Promissory. Of the Promissory, seeing it respecteth the time to come, no man can doubt. But of the Assertory, perhaps not without reason there may be some question made, because all obligation bindeth unto some thing that is future; but it hath been said before, that the difference of the Assertory Oath from the Promissory consisteth in this, that that respecteth a thing present or past, this a future. But the solution is easie, to wit, that the obligation of an oath *quâ tale*, falleth not primarily upon the *object*, or matter of Oath; for so an Assertory Oath whose object is something past, or present, could not lay any obligation for the future. But obligation falleth immediately and directly upon the *subject*, that is the con-

conſcience of the ſwearer, who in both kindes of oath is bound to the performance of ſome duty for the future.

Sect. XIV.

WHich that it may be made more manifeſt, and that withall it may more clearly appear, what the obligation of a Promiſſory Oath (which I have undertaken to explain) is, I will do my beſt to ſhew, what is common to both kindes of Oath, ſo far as it concerneth the effect of obligation; and what is peculiar unto a Promiſſory Oath. And firſt it muſt be granted, which is in it ſelf ſo evident, as its contradictory implyeth a manifeſt contradiction, That all obligation to duty reſpecteth the duty to be performed *de futuro*; that is, at the leaſt ſome time, though perhaps a very ſmall one, after the obligation contracted. Nor is it hard to be obſerved, if diligently conſidered, that this happeneth unto every Oath as well Aſſertory as Promiſſory; for whoſoever ſweareth, obligeth himſelf *ipſo facto*, to manifeſt the truth in that which he is about to ſay, whether

ther it be in a matter past, or present, by an Assertory, or in a future matter by a Promissory Oath. And hitherto this obligation is alike common to both kindes; so that if in either of them the words of the party swearing do not agree with his minde, he becometh guilty of the breach of his duty: and thence also a necessary consequence obnoxious unto punishment. But in the Promissory Oath, besides this obligation which fals upon the conscience of the party swearing, and is common to it and the Assertory, *quatenus juramentum*; there is another further obligation proper and peculiar unto it, *quatenus Promissorium*, which fals upon the matter of the Oath: by vertue whereof the Promissory party swearing is bound not only in present to intend to do that which he sweareth, that his *words may agree with his minde*, but also to *indevour* for the future (as much as in him lyeth) to fulfill that which he hath sworn, that his *deeds may agree with his words*; that is, he obligeth himself not only barely to promise that which he really intendeth; but also farther ob-

obligeth himself to performe all that which he hath promised by Oath; which the words of *Moses* in this verse clearly expresse, *If a man* (saith he) *vow a vow unto the Lord, or sweare an oath to binde his soule with a Bond, he shall not break his word, he shall do according to all that proceedeth out of his mouth.* And thus as fully as I ought, & as clearly as I could, I have unfolded unto you my sense upon the first head of this discourse, what an Oath is, what a Promissory Oath, what Obligation. In my next Lecture (with the help of God) I shall proceed unto the rest in the order which I have proposed.

The ſecond Lecture.

Summary.

1. *A Premonition concerning ſtyle.*
2. Hypotheſis 1. *Above all things ſimplicity becometh an oath.*
3. *Simulation, and deceipt are repugnant unto ſimplicity.*
4,5,6,7. *Simulation doth not evade perjury.*
8. Hypotheſis, 2. *An oath is* ſtricti Juris.
9. *The interpretation of an Oath, ought not to be too looſe.*
10. *All conditions are not to be expreſſed in an oath.*
11. Hypoth. 3. *An oath maketh not a former obligation void.*
12. *An impoſſible thing obligeth not.*
13. *An unlawfull thing obligeth not.*
14. *The difference between an unlawfull oath, and an oath of an unlawful thing.*

Sect. I.

HAving explained in the former Lecture, what an *Oath* is in generall, what a *Promissory Oath* in particular, and what *Obligation*; I proceed (as I promised) to propose some *Preoccupations* or *Hypotheses* fitted for our purpose as foundations, or (if you please) Canons or rules of the whole future discourse; from whence are to be derived, and to which are to be reduced the determinations of most doubts. But before I do this, of one thing by the way, which I go not about to entreat of you, as I should do if I could suspect your favour, or beleeve the thing in it selfe unjust; I desire only to premonish you, that it's my resolution, so long as I can finde wherewithall to be any way significant in my expression of the matter to be handled, not to labour farther for words, muchlesse purity of language, and least of all to trouble my selfe for elegance, I leave that to such as have leisure, and are delighted

to

to take pains for that which is unneceſſary. I uſe to relate amongſt my friends not without ſome ſport and laughter, what ſweat it coſt *Paulus Corteſius*, a man otherwiſe not unlearned, to become the more fooliſh, who whileſt following *Thomas*, and *Scotus*, and many more, he compiled Commentaries upon the four books of Sentences, growing weary forſooth, of the termes uſed in the Schooles, as leſſe *Ciceronian*; for Church (*Flowers* of Rhetorick!) choſe rather to ſay *Senate*; for Eccleſiaſticall Lawes, *Senate-decrees*, for predeſtination *preſignation*, for ordination of Prieſts, *initiation*, for Angell *Genius*, for Biſhop *flamen*, and the like, being all to beſprinkled over with ſuch kinde of powder. Of this diſeaſe alſo I finde Cardinal *Peter Bembo*, and *Sebaſtian Caſtalian*, ſomewhat ſick with others, but thoſe few and more moderately. We will not, we may not be ſo elegant. An *Oratour* deſerveth pardon, nay ought to be praiſed, when he is induſtrious in the choice of his words, if he ſpeak not only aptly and clearly, but alſo with purity, and ornament, it is his vertue; who ſometimes miſ-becometh not his flowry

Chaplet, and embroidery. But a *Philoſopher*, or *Divine*, eſpecially in Scholaſtick Meditations, and knots of controverſie, becomes a curious and adorned ſtyle, as the laborious Oxe would embоſſed Trappings. The materials upon which we labour, being contented only to be taught, neither requireth ornament, nor will endure it. To be converſant in the *Pulpit* and in the *School* is not the ſame: and it is another thing to have a large field where the fluency of ſpeech may finde room, and nouriſhment, and to be entangled in bryers, from which by any means to redeem a mans ſelf without bloud and wounds is a great triumph. But why do I trouble my ſelf with theſe things? If I uſe ſuch words and expreſſions as are uſuall in this kinde of diſcourſe, as I muſt neceſſarily doe; I am leſſe doubtfull of your excuſe in that, then fearfull that the prolixity of my excuſe it ſelf, may ſtand in need of another pardon: wherefore I leave Oratory, and haſt to my *Hypotheſes*.

SECT.

Sect. II.

OF which let this be firſt, *Simplicity above all things becometh an Oath.* That is to ſay, ſuch is the nature, and obligation of an oath, as whoſoever bindeth himſelf to the performance of any thing by ſo ſacred a bond, is wholly bound by the religion of his oath, both in his minde ſeriouſly to intend, and as far as lieth in his power, willingly to endevour, that he may faithfully perform whatſoever he hath promiſed, without fraud, deceipt, double dealing, or ſimulation. *Cicero*, as in moſt things of this kinde, is right in this; *What promiſe ſoever thou ſhalt expreſly make as in the preſence of God, is to be ſtood unto.* He who ſhall do otherwiſe, being careleſſe of the reall performance of that whereunto he is obliged by an oath, is judged here by *Moſes*, *to have broken his word*, that is, baſely and unworthily to have violated a ſacred thing, and ſuch an one as ought not raſhly to be profaned, and to be guilty of evident or diſſembled perjury. For ſeeing that there be three ſorts of perjury, whereof the

firſt is almoſt peculiar unto Aſſertory Oathes, *viz.* when a man ſwears that to be true which he either beleeves to be falſe, or doubteth at the leaſt whether it be true or no; the other two appertain unto the Promiſſory, to wit, the *ſecond*, when a man promiſeth that by an oath, which he meaneth not to performe; and the *third*, when he endevoureth not to perform that which he promiſed and intended: as to the guilt of perjury, eſpecially at the Bar of Conſcience, it matters not much, which way any of the three be committed, openly or covertly; that being a ſymptome of a profane, this of a deceitfull heart; both which, except *fraud be worthy of a greater hatred*, are equally abominable unto the moſt holy God, who loveth *the ſingle in heart*, and *truth in the inward man*. But ſuch as *turn aſide unto their crooked waies*, that is, Hypocrites and deceitfull perſons, *the Lord ſhall lead them forth with the workers of iniquity*, that is, account of them no better then of ſuch as are openly profane and impious.

Pſal. 56.6.
Pſal. 12.5.

SECT.

Sect. III.

UNto this ſimplicity of Oathes, two kindes of *ſimulation* are repugnant: one *a parte ante*, either preceding or accompanying the act of ſwearing; the other *a parte poſt*, or following the act: of which, though the former be worſt, neither is void of perjury. *David* ſeemeth to comprehend both in diſtinct, but parallel places, *viz. Pſal.* 15. and *Pſal.* 24. In one of which to the queſtion, *Who ſhall aſcend into the Hill of the Lord?* Amongſt other things, he maketh this anſwer, *He that hath not ſworn deceitfully*, that is, who did not ſwear with an intention to deceive: where all ſimulation *a parte ante*, to wit, about the time, and in the act of ſwearing, is excluded. In the other two a like queſtion, *Who ſhall abide in thy holy tabernacle?* Amongſt other things, he returns an anſwer not much different from the former, *He that ſweareth to his own hurt, and changeth not*; that is, who after he had obliged himſelf by an oath, had rather perform that, though to his great loſſe which he hath inconveniently ſworn, then violate his

faith for any worldly profit; where all ſimulation *a parte poſt* is excluded. Theſe things ſeem to me, either not at all to be thought upon, or not ſeriouſly by moſt men of theſe times, who unto all, (be it what it will) that is propoſed by ſuch as are able to hurt, fear not without difficulty to make a full, and formall oath; nay rather think themſelves only wiſe, and not without ſome contempt, deride the ſimplicity, and vain fears of others, who that they may not hurt their conſciences, ſeek a knot forſooth in a bul-ruſh, and ravell into the forms preſcribed by ſuch as can preſcribe. In the mean while they reſt ſecure abſolving themſelves from all guilt, and fear of perjury; and think they have excellently provided for themſelves and conſciences, if during the act of ſwearing they can make any ſhift to defend themſelves, either as the Jeſuites doe with ſome equivocation, or mentall reſervation; or by forcing upon the words ſome ſubtle, and unnaturall interpretation; or after they have ſworne they can finde ſome loop-hole or artificiall evaſion, whereby ſuch art may be uſed with the oath, that the words

words remaining, the ſenſe may be eluded with ſome ſophiſme, and the ſtrength utterly loſt. The ancient Chriſtians did not acknowledge this kinde of *Theologie*; nor the ſounder Heathens this *morall Philoſophy*. Far otherwiſe out of thoſe *Auguſtine* ſaid, *they are perjured, who preſerving the words deceive the expectation of them to whom they have ſworn.* And out of theſe otherwiſe *Cicero*, *Whatſoever is ſo ſworn, as the minde of him who took the oath may conceive, what ought to be performed, that is to be ſtood unto.*

Sect. IV.

BUt that I may not ſeem to declaim or contend with authority only, I will prove by ſome reaſons, that Perjury is not taken away by either kinde of ſimulation. *The firſt reaſon.* Of thoſe many places of Scripture, out of which ſingleneſſe of heart, as in all divine worſhip, ſo in the duties of our lives, eſpecially in contracts, promiſes, vowes, and oathes is enjoyned. The preſent text, that I may omit others, requireth of him who taketh an oath in expreſſe termes, that he do according to all that pro-

proceedeth out of his mouth. *Vt omnino faciat*, that is, that both at that time he faithfully intend to do, and afterwards to his power faithfully endevour to do *according to all that proceedeth out of his mouth*, that is, according to the ſenſe which the words by him uttered, after the common and received manner of ſpeech, bear in the underſtanding of the Auditors, and not according to that ſenſe which he perhaps during the act of ſwearing in his ſecret thoughts reſerveth unto himſelf, and fraudulently intendeth. Whereunto that agreeth which is brought out of *Iſidorus*, *With what artifice of words ſoever a man ſwear, God who is witneſſe of his conſcience, taketh the ſame as he underſtandeth it, to whom the oath is made*: and not according to the ſenſe which the party ſworne, when he begins to repent of the fact, goeth about to invent *for faſhion ſake*, as they ſpeak; not fully and ſincerely to perform the faith of his oath, as he ought, but that he may after a ſort appear unto himſelf and others to have performed his duty, and with this artifice very warily, and providently to have avoided the crime of perjury.

SECT.

Sect. V.

THE *ſecond Reaſon* is drawn from the example of God himſelf, who as the Apoſtle writes, *Heb. 6.* for this very cauſe confirmed his promiſes made unto the faithfull by an oath, that he might witneſſe unto them *more abundantly*, that is, as fully as could poſſibly be, and ſo as might leave no place to doubt, the *immutability of his counſels* in fulfilling of that which he had ſworn to perform: and all this, to the end that they who ſhould beleeve might have a *ſtrong conſolation*, and firm truſt in him; which nevertheleſſe they could not have, if it were not impoſſible for God to lie, or deceive them to whom he had ſworn by fruſtrating their expectation. But he would deceive and fruſtrate the hope and conſolation in him of beleevers, if either whileſt he ſware, he intended not to doe as he promiſed, or afterwards changing his minde, ſhould not perform it in due time, nor *after the ſame ſenſe* in which his promiſes were by them according to the tenor of the words rightly underſtood.

Pſal. 110. 4. Pſal. 132. 11. ſtood. *The Lord hath ſworn, and will not repent. The Lord hath ſworn in truth unto* David, *he will not turn from it.*

Sect. VI.

Jer. 4. 2. THE *third Reaſon* from the nature of truth, which is firſt and chief of thoſe three celebrated conditions of an oath extant in the Prophet *Jeremy*, inculcated by all, and called by the Schoolmen, the *three companions of an oath*; viz. *Truth, Judgement, Juſtice*. To which *Truth* is repugnant, not only that which is *falſe*, but that alſo which is *feigned*; not only a bare and evident lie, but a covered one alſo, howſoever palliated. Certainly whoſoever ſpeaketh falſly unto his neighbour, polluteth his ſpeech with a lie: and he hath ſpoken falſly unto his neighbour, who hath been the occaſion of deceiving his neighbour of that hope which he had rationally conceived from his ſpeech. Since therefore by ſimulation of either kinde a *Lie* is not avoided, if through our fault our neighbour truſting to our words be deceived, ſurely neither is *Perjury* avoided, if through our fault he be deceived,

ceived, by truſting unto our oathes; ſeeing that *Perjury* is nothing elſe but *a lie confirmed by an oath.* So that *Perjury* after an oath taken is the very ſame, that a *Lie* is in a bare promiſe.

Sect. VII.

THE *fourth Reaſon*, from the proper end of an Oath: which by that hath been ſaid when we explained the definition of an oath, appeared to be *confirmation of a thing in doubt*; that is, that as great certainty may be had of things otherwiſe incertain and depending upon the truth of men, as is poſſible to be had in humane affairs. For an oath is inſtituted of God by the light of nature for a remedy of humane defects in the ſearch of truth, that it might be the laſt mortal refuge for the defence of Verity, when all other kindes of proof are deficient. But this end would be utterly overthrown, nor could any certain credit be given to men, if it were lawfull for the party ſwearing at his pleaſure, ſo to enervate that which he verbally pronounceth to the end to obtain belief, either by any

any tacite ambiguity in ſwearing, or after the oath taken, by any new invented and as it were poſthume interpretation, that it loſe its whole force, and become altogether ineffectuall. If either of theſe were lawfull, an oath would not be *the end of all contradiction*, but the beginning, and rather give occaſion of new ſtrifes, and contradictions, then determine old ones. This door once opened, what can be imagined ſo falſe, for the defence whereof ſome kinde of at leaſt diverſion or ſubterfuge might not be found out, whereby it might be delivered from the lie? In the mean time how great a perverſity is this, that what the wiſe God hath ordained for an *aide of truth*, ſhould by impious man be turned into an *inſtrument of falſhood*? Verily unleſſe men had rather uſe the ſacred ordinance of God to other ends, then that for which it was ordained (as a pious man can hardly doe) that which is the end of an oath ought likewiſe to be his end who taketh an oath; now that is to give ſuch aſſurance unto the hearer, that he may become more ſecure, and certain of the truth of a matter which

was

was before in doubt. But he who diſſembleth, goes about to poſſeſſe the auditors with a falſe belief, and ſo not only ſuffereth others to be deceived, (which nevertheleſs ſeeing it might and ought to be hindred is *againſt Charity*) but intendeth alſo to deceive them, which beſides that it is *againſt* all *juſtice and honeſty*, is joyned with high indignity to God, and contempt of his holy name. And to my underſtanding, ſcarce any kinde of perjury ſeemeth to be more diametrically oppoſed to the ſcope of the *third precept in the Decalogue*, or to thoſe very words, *Thou ſhalt not take the name of the Lord thy God in vain*, then that which ariſeth out of this ſimulation. For the word *Vanity*, to ſpeak properly and adequately, as it taketh in all that is any way falſe, ſo in a kinde of peculiar manner, and moſt properly, it ſignifieth that which is falſe in ſuch a manner, as beareth ſome ſhew of truth; ſo that if a man would expreſſe by a definition, the nature and eſſence of Vanity, (though it be *ens rationis* only, and hath no true eſſence) yet by analogie with *ens reale*, he could not do it better, then by framing an Idea

in

his imagination compounded of *Nothing* as the *Matter*, and of a *Lie* as the *Form*. Thus *Hope* which feeds it self with a lie, and is at the length fruſtrated, and brought to nothing, is *Vain hope*. And to the preſent point, he who promiſeth any thing to come certainly to paſſe, taketh the name of God for the confirmation of truth, which nevertheleſſe comes all to nothing, that either not intended or not performed which he promiſed; the ſame directly, and to the letter, *taketh the name of God in vain*, violateth Gods Commandement, and is guilty of the hainous crime of perjury. And thus you have a ſufficient confirmation of the *firſt Hypotheſis*, concerning the Simplicity of oathes.

Sect. VIII.

THE *ſecond* followes, which is of kin to this, and appertaineth to the right interpretation of an oath; briefly it is this, The obligation of an oath is *ſtricti juris*. I underſtand here *jus ſtrictum*, not in that ſenſe wherein it occurreth ſo often amongſt Lawyers, for the *rigour of the Law*, which is oppoſed to *Equity*

equity, to wit, by which *judgement is turned into wormwood*, and which is for the most part so interwoven with injury, that it is almost become a proverb, *Summum jus, summa injuria*. But somewhat more mildly for so just an interpretation of the Law, and so circumscribed to her bounds, that the words of the Law be not stretched farther then is fit by way of complacence or favour to any party; or forced to serve any mans turn or profit. In a word, *strictum jus* is here so taken, as may not exclude the interpretation of Law, tempered with equity; but excludeth the interpretation of the Law corrupted with favour. Now seeing *to interpret*, is nothing else but to expound a thing wherein there lyeth some ambiguity or obscurity; it is to be understood, that a *threefold* interpretation or exposition may be given of the same thing. *Rigid, Favourable, Just*; *Rigid* and *favourable* are the extremes: and, as most extremes be, vicious. And as there is for the most part a certain *coincidence* of *extremes*, but so unhappy an one, seeing they recede both waies from the *medium*, that they ever meet in that which is ill; Amos 6. 12.

and for the moſt part in that which is worſt; *too rigid* and *too favourable* an interpretation of the Law meet in this, that each of them by an unjuſt acceptation of perſons, offereth in a manner violence unto the Law, wracking it with too ſubtle an expoſition to the eaſe of one party, and grievance of the other; but with this difference, that he who is animated with *hatred to the parties*, preſſeth the more rigid interpretation; and he who is led with *affection*, followeth the more favourable. But a mean between both, and *juſt* interpretation, is that which without reſpect of perſons inveſtigateth the true and genuine ſenſe of the Law, out of naturall equity and juſtice, and the words themſelves, as far as they agree with equity and juſtice. And this, if out of the words it may ſufficiently appear, is in all caſes exactly to be followed. But becauſe it may happen, and often happeneth, that controverſies ariſe about the proper and naturall ſenſe of Lawes, and other matters which need interpretations; where for the dubiouſneſſe of the thing a *juſt interpretation* is not to be had, of neceſſity we muſt allow unto this

this mediocrity (as I may call it) her *prudentiall Latitude*. As the Ethicks ſay that the mediocrity of vertue conſiſteth not in an indiviſible point, or Arithmeticall proportion, but in a Geometricall. In a Law therefore which is doubtfull, now a ſtricter, now a milder interpretation according to the nature of the thing in queſtion, ſupplieth the place of a *juſt interpretation*: whereof the *ſtrict*, being remoter from the favourable, comes nearer to the rigid; and the *milde* being nearer to the favourable, declines the more from the rigid. As in the Morals, that vertue which is the mean between *Covetouſnes*, and *Prodigality*, the more remote it be from either extreme is called *Liberality*, or *Frugality*. There are therefore ſome things ſo ordained by nature, that they require as due, the allowance of a milder interpretation, to wit, ſuch an one, as may not be bound up in the ſtraightneſſe of words, but left more at liberty (to uſe *Cicero*'s term) *cum quodam laxamento*: ſuch for example is *res teſtamentaria* in our Law. So by the rule of charity, the words and deeds of others, eſpecially of Princes, Parents, and other

rulers, the writings alſo of pious, and learned men (unleſſe there lie very juſt cauſe of ſuſpicion to the contrary) are to be handled with a *milde interpretation*, according to the uſuall ſaying, Doubtfull things are to be interpreted in the better ſenſe. But there are divers other matters, as *Priviledges*, *Deeds* of contracts about debt, and moſt of thoſe things which binde legally, and amongſt them *Oathes*: in which when queſtion is made of the true ſenſe, it is much better, and more ſutable unto the nature of the thing to uſe the ſtricter, then the milder interpretation.

Sect. IX.

WHen I ſay therefore that an oath is *ſtricti juris*, that muſt be thus underſtood, the ſenſe of an oath where it is ſufficiently manifeſt in the words, is exactly to be ſtood unto: but where the ſenſe is doubtfull, we muſt take diligent heed, leſt we be too indulgent unto our ſelves and our own affections, or yeeld unto our ſelves too free, and looſe a licenſe of interpretation, whereby we may become exempt from the bond of the

the oath in which we are bound; as alſo that for our own intereſt, and profit ſake, we impoſe not upon the oath which we have taken, or any part thereof, other ſenſe then that which any other pious and prudent man (who being unconcerned in the buſineſſe, is of a freer judgement) may eaſily gather out of the words themſelves. The reaſon is twofold: one *in reſpect of others*, to wit, for the fear of *ſcandall*, leſt a weaker brother led by our example, think it lawfull for him to do as he ſeeth we have done, though he be ignorant of thoſe ſubtilties, by which alone we uſe to abſolve our ſelves from the crime of perjury. Another in *reſpect of our ſelves*, for fear of *perjury*; of which hainous crime we become without queſtion guilty, if that milder interpretation which encouraged us unto the oath, chance to deceive us. And this reaſon is founded upon the moſt generall, and profitable rule, which in *doubtfull matters* commands *the choice of the ſafer part*. But where the words of the oath propoſed according to the common and obvious ſenſe of them, ſeem to contain ſome unlawfull thing, it is ſafer not to ſwear,

then by a looſer interpretation ſo to work them unto our ſenſe, that we may more ſecurely ſwear unto them; it being apparent that this kinde of oath may be refuſed without danger of perjury, but not apparent that it may be taken without fear or danger of the ſame.

Sect. X.

NEvertheleſſe heed is to be taken on the other ſide, leſt this *ſtrict* interpretation whereof we ſpeak degenerate into the *rigid* one. For that which the Lawyers ſay of *Priviledges*, holds generally in things of like nature, and eſpecially in *Oathes*, that they are neither too ſtrictly, nor too largely to be interpreted. Wherefore when I ſay, that an oath is *ſtricti juris*, I am ſo to be underſtood, that therein nevertheleſſe as in every oath, how ſimply ſoever taken, and free from exception, all thoſe *exceptions and conditions*, both may and ought to be preſumed which all Lawes allow unto an oath, to the end that it may be binding; whereof theſe that follow are the chief, and thoſe perhaps

haps, to which moſt of the reſt may be reduced. Firſt, it is to be preſumed, *If God permit*, according to that of *James*, *If the Lord will, we will live, and do this or that*. Wherefore if *Caius* ſwear unto *Titius* that he will be at *London* the fift of *January*, and pay the money he oweth him, if he happen at that time to be kept in his bed by ſickneſſe, or were robbed of his money by the way; in this caſe he is not guilty of perjury. The reaſon is, that all things being ſubordinate unto divine will, and providence, and no man having power to diſpoſe of all events, he who doth what lyeth in his power towards the performance of his promiſe, hath fulfilled his oath: for ſeeing that an *impoſſible thing obligeth not*, as anon you will hear, every oath is of common right to be underſtood with this clauſe, *If it pleaſe God*, or the like. The ſecond thing to be preſumed is, *As farre as is lawfull*; for *an unlawfull thing obligeth not*. As if a man ſhould ſwear indefinitely to obſerve all the Statutes and Cuſtomes of a Corporation, he were not thereby obliged to obſerve any that were not lawfull and honeſt. The third thing to be preſu-

med is, *A ſalvo to ſuperiour power.* Wherefore if a ſon ſwear that he will perform ſome lawfull thing, and his father ignorant thereof lay ſome other command upon him which hinders the performance of his oath, the ſon is not obnoxious to the oath: becauſe by divine and naturall Law, he is bound to obey his fathers commands. And he who hath ſworn not to ſtir from home, if he be ſummoned by a lawfull Judge to appear, is bound to go notwithſtanding his oath. The reaſon is, that one mans act ought not to prejudice another mans right. The fourth thing to be preſumed is, *Rebus ſic ſtantibus*, that is, if things remain in the ſame ſtate wherein they now are. Whence he who hath ſworn to reſtore a ſword, is not bound to reſtore it to a mad man. And he who hath ſworn to take a woman to wife, is not bound to take her, if he finde afterwards that ſhe is with childe by another. Theſe and the like conditions, whoſe reaſon is clear, are fit in every oath to be preſumed, though they be not expreſſed, and he would be too rigid an interpreter who ſhould go about to exclude any of them. But if any

any man ſhall admit more doubtfull exceptions and diſſonant not only from the words of the oath, but from all right reaſon, and not approved by common right, or conſent of nations; verily he ſhaketh the very foundations laid by God of an oath, and openeth a large field unto all kinde of perjuries, by his raſh enterprize. And ſo we leave our ſecond Hypotheſis of *the ſtrict interpretation of an oath.*

Sect. XI.

UPon which, as alſo that before *of the ſimplicity of an Oath*, I thought good more largely to inſiſt (though many things have fallen into my meditations not unworthy knowledge, which neverleleſſe for brevity ſake I have omitted) both becauſe the clearer interpretation of them ſeemed unto me very neceſſary in theſe moſt diſſolute times, wherein men generally play with oathes, as *boyes* do with *Cockals*, and that there is very conſiderable uſe of theſe two Hypotheſes, in that which with Gods help, I am about to ſay in my future Lectures. The reſt I ſhall more briefly

briefly dispatch. The third Hypothesis; *An oath maketh not a former obligation void.* An oath hath naturally its obligatory power; but *constructive* only, not *destructive*; that is, it may lay an obligation where there was none before, or strengthen one that lay before, but it cannot take away that which it findeth, or impose another which is repugnant unto it. The reason is; because by all obligation some right is conferred upon another, for whosoever is obliged is obliged unto another, and it seems most unjust that by the meer act of one the right of another without his own consent should be weakned. Nor will it make any thing to this purpose, whether that obligation we suppose, were *naturall* or *acquisite*. Naturall and necessary *obligation* is that whereby we are bound unto the performance of some duty unto another, which by the Law of nature we owe him in relation to our person, which as I observed in our former Lecture, some call *obligation of Equity*; because it originally deriveth from the Law of nature, which is both most equall, and the rule of all equity; such is the mutuall obligation be-

between the husband and wife, the father and ſon, the maſter and ſervant, the Prince and his ſubjects. *Acquiſite* and voluntary *obligation*, which is alſo called *Civill*, (by a *Synecdoche ſpecici*) and *of juſtice*, becauſe it is juſt that a man ſhould be bound unto that whereunto he hath voluntarily bound himſelf; is that whereby we are ingaged unto the performance of ſome duty to another, which we owe him by agreement, and vertue of ſome proper and voluntary act: ſuch is the obligation which ariſes from promiſes, vowes, oathes, leagues, and other humane contracts, and conventions. If therefore an oath be offered unto any man containing any thing repugnant unto a former *obligation*, whether *naturall*, or *acquiſite*, as if it be repugnant unto the obedience due unto a Parent, or the Prince, or if it be repugnant unto that which was lawfully ſworn, or promiſed before; ſuch an oath no man can take, or taken, fulfill with a ſafe conſcience: Who doth either of theſe, is perjured.

SECT.

Sect. XII.

THe *fourth Hypotheſis* followes, which is ſo evident of it ſelf, that it is a *rule of the Law*, and needeth no proof. *An impoſſible thing obligeth not.* And this is extended unto all kinde of impoſſibility which may happen in matter of Law. Now a thing may be *impoſſible* either *per ſe*, or *per accidens*. *Per ſe* three wayes; Firſt, by a *naturall impoſſibility*, as for a man to flie, a fiſh to ſpeak. Secondly, by an *impoſſibility of fact*; as for *Caius* ſtaying this day at *London* to meet *Titius* to morrow at *Venice*. Thirdly, by an *impoſſibility of Law*; as it is ſaid impoſſible for a man to do that which he hath no legall power to do; in which ſenſe that ordinary ſpeech is to be underſtood, *Id tantum poſſumus, quod jure poſſumus.* Thus it is impoſſible for the Maior of this City to confer upon any man the degree of Doctor. If a man ſhould ſwear an impoſſibility of any of theſe three kindes, his oath were vain and from the beginning null, and by conſequence could not at all oblige him, to endevour that which he ſware,

much

much leſſe to perform it. But the nature of a thing *impoſſible by accident only*, is ſomewhat different. As if a man having ſworn to pay an hundred pound within a moneth, which is not impoſſible *per ſe*, be hindred by ſome unexpected accident, in ſuch ſort that he cannot make the ſum within the time appointed. Albeit he be not obliged in conſcience to the performance of his promiſe, to wit the payment of the whole debt within the time limited, which is now rendred impoſſible; nevertheleſſe he is obliged to do what he can, *viz.* to pay as much, and that as ſoon as he is able. The reaſon of both is, that becauſe in this caſe impoſſibility only impedeth the obligation. The obligation is only ſo far taken away as the performance is impoſſible, but in the reſt remaineth. And he who cannot pay all he oweth, ought yet to pay all he can.

Sect. XIII.

THe fifth Hypotheſis: *An unlawfull thing obligeth not.* An *unlawfull thing* is whatſoever is againſt any precept of God

God in the Decalogue, or a vertuous life, whatsoever is repugnant unto our piety towards God, or our charity towards our neighbour, whatsoever is averse to the common good, or peace Ecclesiasticall, Politicall, Domesticall; in a word, whatsoever is sinfull. Hereunto appertain those common sayings, *An oath is not the bond of iniquity. In sinfull promises revoke thy faith, &c.* The reason is, because every unlawfull thing is against duty, but all obligation is to duty. Furthermore, whatsoever is unlawfull, is in some sort forbidden by God, (either immediately, or by consequence) but Gods prohibition obligeth unto the not doing of that which is forbidden, which obligation a subsequent oath, as appears by the third Hypothesis, cannot make void. Nay, he who hath sworn to do that, which he cannot do without sin, is so far from being obliged unto the performance thereof, that he is rather obliged in no wise to perform the same. But you will say, for a man not to fulfil his oath is perjury: nay verily if the thing be unlawfull whereunto thou wert sworn, thou wast then perjured when thou

ſweareſt: thou art not perjured, when thou repenteſt. And therefore to fulfill an unlawful thing becauſe thou haſt ſworn it, is to heap wickedneſſe upon perjury, like *Pelion* upon *Oſſa*, or *drunkenneſſe* to *thirſt*; to fulfill rather the meaſure of perjury, then thy oath; to perſevere in perjury with obduriety, and impenitence.

Sect. XIV.

NEvertheleſs concerning this Hypotheſis, I muſt advertiſe, that this queſtion, *Whether this or that oath be lawfull?* differs very much from that, *Whether this or that oath oblige?* For although it be certain that what ought not to be performed, ought not to be ſworn, nevertheleſſe it may come, and doth come very often to paſſe, that what ought not to have been ſworn, ought notwithſtanding to be performed. Of this the league made by *Joſhua* with the *Gibeonites*, is a moſt evident example. The difference lyeth in this: where an oath is therefore unlawfull, becauſe that which a man ſwears is an unlawfull thing, there he ſinneth both waies, in ſwearing,

ſwearing, and in performing: as if one ſhould ſwear to ſlay an innocent, and do it, he is guilty both of perjury and murder. And ſuch an oath is in no waies binding, which is the true ſenſe of this laſt Hypotheſis. But where an oath of a thing which is not unlawful, becometh otherwiſe unlawfull by ſome externall defect, or through ſome undue circumſtance; it may oblige the party ſwearing to the performance of his promiſe, except there appear other impediment. And in this caſe cometh in that vulgar ſpeech, *Fieri non debet, factum valet.* We may therefore diſtinguiſh; an oath may be ſaid unlawfull two waies, either in reſpect of *the thing ſworn*, or the *act of ſwearing*. An oath unlawfull in reſpect of the thing ſworn doth in no wiſe oblige: an oath unlawfull in reſpect of the act of ſwearing obligeth, except it be hindred by ſome other cauſe. But thus much of theſe Hypotheſes, which I thought fit to lead in the enſuing diſcourſe, being props and ſupporters whereupon thoſe things whereof I ſhall ſpeak hereafter concerning the bond of an oath, and the ſolution of that bond, are ſuſtained.

The

The third Lecture.

Containing ſixteen Caſes.

Summary.

1, 2. *The uſe of method, and order of the things to be handled; of the matter of an oath.*
3. *Oath of a thing ſimply impoſſible.*
4. *Oath of an impoſſible thing, and from the beginning improbable.*
5. *Oath of an impoſſible thing, and from the beginning probable.*
6. *Oath of a neceſſary thing.*
7. *Oath of an unlawfull thing.*
8. *Oath of a thing ſimply unlawfull.*
9. *Oath of a thing unlawfull by Circumſtance.*
10. *Oath of a thing which ſeemeth unlawfull to the party ſwearing.*
11. *Oath repugnant to former obligation.*
12. *Oath hindring ſome good.*
13. *Oath tending to the hurt of the party ſwearing.*

14. *Oath giving ſcandall to another.*
15. *Oath of an indifferent thing.*
16. *Oath to do what another would have to be done.*
17, 18. *Oath to preſerve Lawes, and obſerve ſtatutes.*
19. *Caution concerning a right underſtanding of the things mentioned.*

Sect. I.

I Begin here to launch into a vaſt ſea, being to fulfill the promiſe and ſpeak of the *doubtfull caſes of conſcience*, which appertain unto the bond of an oath, which I ſhall do according unto the four kindes of Cauſes. But before I weigh anchor, give me leave to advertiſe you, that I ſhall not trouble my ſelf very much in the *Method* of thoſe things which are to be handled. Truly the uſe of *Order* in all kindes of ſtudy and diſcourſe is very great and neceſſary, without which a man by aſſiduous and abundant reading, may perhaps acquire unto himſelf a maſſe of various lear-

learning, but that confuſed, indigeſted, and without any great profit; on the other ſide that exceſſive curioſity of method, (which I finde ſome too induſtriouſly to affect) I have ever thought fit to be avoided as a kinde of troubleſome ſuperſtition, and no ſmall remora to ſuch as are ſtudious; it ſhall ſatisfie me ſo to reduce all that which I am about to deliver, unto certain Claſſes, that at the leaſt ſome reaſon of reſemblance or analogie, may ſhew why I do it; nor ſhall it trouble me much if a fault be found that the ſenſe and interpretation of an oath is not well reduced to the *formall*, or ſome effect of it to the *finall cauſe*. Now ſeeing where all the cauſes concurre to produce an effect, *Matter* in the firſt place is required, as the firſt ſubject of generation; in the next the *Efficient Cauſe*, which by acting produceth the form; in the third the *Form*, which by the action of the efficient is to be introduced into the matter. Laſtly, the *End* for whoſe ſake the efficient operateth. We, as it were following theſe ſteps of nature, will begin with Matter, and thence in their order proceed unto the reſt.

Sect. II.

BY the *matter* of an *oath*, I mean that about which it is imployed, and for the confirmation whereof it is made, whether it be considered as *to be sworn*, or as *sworn*. Of a thing to be sworn, the question is, *whether it be lawfull* to swear after this or that manner? Of a thing sworn, the matter being stated, *whether* the conscience be, and *how far* it is *obliged* by the oath? be it lawfull or unlawfull; (for obligation may arise from an unlawfull Act) And this question only is proper to our purpose; Nevertheless I shall often cursorily expresse, at the least where I finde that the same pot may whiten either wall, what I think of the other question also, especially since by intimation of my friends, I understand it is expected by some, and will be acceptable unto the most of you. The *matter* therefore of an oath, (that I may return to the businesse) is either *definite* or *indefinite*. That which is certain and definite, may be considered according unto its *esse naturale*, or existence; to wit, whether it be

be a thing possible to be performed or impossible; or according to its *esse morale*, or *quality*; to wit, whether it be a thing necessary, unlawfull, or indifferent?

Sect. III.

THe *first doubt* is, what obligation there is in an oath, containing an impossible thing: that is, if a man should swear to do a thing which he is not able to do, whether he be, and how far he is obliged thereunto. The *Cases* which occur in this doubt, are especially *three*. First, where the thing to be sworn was from the beginning, and during the act of swearing, evidently and simply impossible, either by *impossibility of nature*, when the thing in it self, and barely considered without respect unto circumstance, implyeth a manifest contradiction, or is repugnant unto the nature of any species of *ens*, as if a man should promise to teach an Asse to speak. Or *impossibility of fact*, *Cum res est in potentia* (as they speak) *remota ad fieri*; that is, when there is no such repugnance in the nature of the

thing it ſelf, but it might be done, yet through defect in ſome circumſtance, (for example) too great diſtance of place, ſtraightneſſe of time, or any other cauſe, that *potentia* is ſo hindred that it cannot proceed unto *act*: as if *Caius* being this day preſent at *Oxford*, ſhould promiſe to ſup with *Titius* to morrow at *Paris*. Or laſtly, *impoſſibility of Law*; when a man undertaketh to do any thing which is forbidden him by the Law, and whereunto he hath no legitimate power: as if *Caius* not being heir, ſhould promiſe to give unto *Julius* ſome proportion of the goods of *Titius* deceated. In anſwer to the doubt in this firſt caſe, I ſay briefly, An oath of a thing ſimply impoſſible, is neither lawfull nor obligatory. *It is not lawfull*, becauſe it is void both of judgement, and truth: for what man of ſound judgement, or of good credit, can intend to do, that which he knoweth impoſſible to be done? *Neither doth it oblige*, no not ſo far as to endevour, much leſſe to perform; For it hath been already ſaid that an impoſſible thing, (*quatenus impoſſibilis*) obligeth not; and it is fooliſh to endevour that which thou canſt not effect. SECT.

Sect. IV.

THe *ſecond Caſe* is, when a thing in it ſelf not impoſſible, yet during the time of the oath given ſeeming ſo impoſſible, that it is much more likely not to be, then to be poſſible afterwards to be performed, becometh at length by ſome interpoſed obſtacle impoſſible; for where the concourſe of many things is ſo neceſſarily required to the perfecting of any deſign, that one of many being wanting, the reſt muſt neceſſarily be fruſtrated (as if a wheele or pin, though a ſmall one, ſhould be taken out of a watch, the reſt of the fabrick would be uſeleſſe) it can hardly happen but the pains taken in ſuch a buſineſſe, muſt needs be fruitleſſe: For example, if *Caius* ſhould undertake by his induſtry to procure unto *Titius* a new, and obſcure man the Conſulſhip, at the next *Commitia*, and to carry it againſt Competitors for birth, glory, vertue, authority, the moſt renowned of all the City. I anſwer, that ſuch an oath is *not lawfull*, without the expreſſe addition of ſome clauſe; as, *If I can*, *As far*

as lyeth in my power, &c. If you ſhall ſay, it were needleſſe to adde a clauſe which *de lege communi* ought to be preſuppoſed. I anſwer, by the interpretation of the Law, ſuch clauſes are preſuppoſed, where it may be preſumed the party ſwearing could not foreſee any thing which might be an impediment unto the performance of his promiſe: but where that cannot, but rather the contrary may be preſumed; to wit, that he could not but foreſee many impediments, there ſo milde an interpretation is not granted *de jure communi.* Nevertheleſſe this kinde of oath *obligeth*, not *to performance*, which we ſuppoſe to be impoſſible, but *to endevour* ſo long as there is hope though ſmall, that it may be poſſible: yea and the more the difficulties be, and the greater their reſiſtance, the more induſtriouſly to perſiſt, and perſevere with the more undaunted courage. But if the thing be over apparently deſperate, and manifeſtly impoſſible, the obligation ceaſeth, from the ground expreſſed, that no man is obliged unto an impoſſibility.

SECT.

Sect. V.

THe *third caſe* is, when the party ſwearing verily, beleeving the thing probable, and faithfully intending to do it, doubteth not (by Gods help) but he ſhall be able to make good his words; nevertheleſſe afterwards by ſome emergent, and unexpected accident, which could not by any humane reaſon be foreſeen or prevented, findes the matter at the length become impoſſible. As if *Callias* dwelling at *Thebes*, having ſworn to pay unto *Socrates* at *Athens* five talents at a day appointed, ſhould loſe the money which he had carefully provided, by theft, rapine, or couſenage, or ſhould be taken priſoner upon the way, ſo that he were not able to make payment of the debt in due time. Such an oath is *lawfull*, though the clauſe, (*If I can*) be not added, the ſame being to be underſtood of courſe, and by the common interpretation of the Law. In which regard this ſeemeth unto me good reaſon of difference between this Caſe, and that which preceded. Seeing that the

faith

faith of promiſe, be given unto the party unto whom we ſwear, is the end of an oath; it is expedient that ſo much as ſeemeth ſufficiently conducing thereunto, be fully expreſſed, during the act of ſwearing, that ſo our credit may be the more ratified unto the party; but that ſo much on the other ſide be concealed, as might render our credit the more ſuſpected. For as in an improbable matter the party ſwearing would not eaſily be credited, but thought a forward, raſh and too confident man, if without exception or expreſſion of difficulty he ſhould barely promiſe performance of a thing full of uncertainty: ſo on the other ſide, an exception added where there is no appearance of danger, might render the party ſwearing ſuſpected; and ſhew as if he ſought nothing elſe by ſo impertinent diligence; but a ſhift or ſubterfuge for the violation of his faith. Now this kinde of oath *obligeth* the party ſwearing, if he cannot make all good, to make good *all he can*; and if great damage happen unto the other through non-performance of his oath, to apply a remedy to it, at the leaſt in part, by

ſome

ſome other benefit, as opportunity may enable him, eſpecially if the obſtacle hapned by his negligence, want of prudence or other fault committed. And ſo much for the firſt doubt.

Sect. VI.

THe *ſecond* about an oath of a neceſſary thing followes. By a *neceſſary thing*, I underſtand that which lyeth upon us in reſpect of our duty, by vertue of divine precept, and even without an oath, in ſuch manner as if we do not, though without an oath, perform the ſame in due time and place, we become guilty of ſin: ſuch are to feed our needy parents, to pay our debts, and the like. Whereunto belong thoſe oathes required from the ſubject of allegiance to the King, and of acknowledgement, and defence of his royall ſupremacy, which are taken in conceived words, by ſuch as are admitted unto the Magiſtracy, or any publick office, to the end they may faithfully performe the duty of the ſame. Of the obligation of this kinde of oath, there can be no controverſie; for unto thoſe things whereunto

unto we are bound even without an oath, certainly we are much more obliged by an oath; to wit, the new obligation of an oath, being added unto that before by a precept: Wherefore we will ſtay no longer upon this doubt.

Sect. VII.

THe *third doubt* is concerning an oath of an unlawfull thing. I call that an *unlawfull thing* which cannot be done without ſin, foraſmuch as it is contrary unto ſome divine precept; all ſin being averſe unto the Law of God. Now this kinde of oath is ſo *unlawfull*, that not only the party ſwearing, but he alſo by whoſe authority, counſell, or other means, a man is compelled or inveigled ſo to ſwear, committeth ſin. But of the party compelling, I ſhall perhaps ſpeak hereafter; in the mean time, the party ſo ſwearing committeth ſin, whether he intend to do as he ſweareth, or intend it not. If he intend to do it, he ſinneth in willing an unlawfull thing, and ſo ſweareth not in juſtice; if he intend it not, he ſinneth in

in lying, and ſo ſweareth not in truth; But whether he intend it or not, it is certain, that he is *in no wiſe obliged.* It cometh indeed very often to paſſe (ſo contemptuous are men of the Majeſty of God) that through impatience of revenge, fear of danger, hope of profit, importunity of friends, a kinde of awe, or complacence, or ſome other occaſion, many are induced (whileſt they indulge too much unto their own affections) to promiſe in the preſence of God, the performance of ſuch things, as they either at the preſent know certainly to be unlawfull, or at leaſt afterwards when they are free from their depraved affections, eaſily perceive impoſſible without ſin to be accompliſhed: and yet ſuch is the perverſeneſſe of humane judgement bewitched with the tricks, and deluſions of that skilfull artificer in this art the Devill, that you ſhall ſee many whom you cannot by any duty of conſcience compell unto a good action, nevertheleſſe ſo violently carryed by the religion of an oath unto wicked actions, that what they have unlawfully ſworn, they think themſelves through a moſt pernicious errour

errour obliged by the bond of their oath irresistibly to accomplish. But it hath been shewn before in our fifth Hypothesis, and confirmed by manifest reasons, that of an unlawfull thing as unlawfull there can be no obligation, and that evill can receive no validity from an oath.

Sect. VIII.

WHich that it may be the better understood, and applyed unto the particular cases, seeing that all unlawfull things are not of the same kinde and degree, I think that it will be fit that I speak somewhat more distinctly of this matter. Whatsoever therefore is unlawfull, is unlawfull either *ex se*, or *ex accidente*: again, that which is unlawfull *ex se*, is so either *primarily*, or *secondarily*; things *unlawfull, ex se primarió*, and in the highest degree, are such as are forbidden by God unto all mankinde, whatsoever is against the sacred Law of God, comprehended in the two Tables of the Decalogue; whatsoever is repugnant either to our piety in the worship of God, or brotherly charity in

in the works of juſtice, and mercy, is after this manner unlawfull. And concerning a thing in this firſt manner unlawfull, is the *firſt Caſe*. As if a man ſhould ſwear that he would ſacrifice unto Idols, or adore the image of the bleſſed Virgin, which are *ſins of Commiſſion*: or if he ſhould ſwear never to be preſent at divine ordinances, or hear holy Sermons, or participate of the Lords Supper, or ſanctifie the Lords Day, which are *ſins of omiſſion*, againſt the precepts of the *firſt Table*. Or if a man ſhould ſwear to kill his father, or caſt his new born child out of doors, or meet an adultereſſe at an appointed place and hour, to accompany others in theft, robbery, fraud, or any the like crimes, which are *ſins of commiſſion*. Or if he ſhould ſwear not to relieve his aged and needy father, to give almes unto the poor, not to pay his debts, &c. which are *ſins of omiſſion*, againſt the precepts of the *ſecond Table*. In theſe and ſuch like things ſimply and univerſally unlawfull, the forementioned Hypotheſis, by the conſent of all, is likewiſe ſimply and univerſally of force, and vigour; to wit, that there can be no obli-

obligation in ſuch a vow, promiſe, oath, either in its ſelf, or otherwiſe acquired. *Pacta quæ turpem cauſam continent non ſunt obſervanda*, ſay the Lawyers. Nay though it were a grievous ſin to vow, ſwear, bargain, or otherwiſe to promiſe a thing generally unlawfull, yet is the ſin in performing the promiſe much greater, which whoſoever doth, maketh himſelf guilty of a double crime, one of the ſame kinde with the fact conſidered in its ſelf, put the caſe it be theft or murder, another of violated religion through irreverence and abuſe of the divine Name, foraſmuch as an evill thing is eſtabliſhed, as far as lyeth in his power, by his authority.

Sect. IX.

THe *ſecond Caſe* is of a thing *unlawfull, ex ſe ſecundariò*, that is, not in its own nature unlawfull to all but to ſome only, according to the condition of their perſons, as they are members of ſome community, or according to their particular vocation. For it is unlawful (and that *ex ſe*, not *ex accidente* only) for ſuch

ſuch as are members of any Politique body to doe any thing *repugnant to the Laws of their Community*; which nevertheleſs as forbidden by God, is not primarily, immediately, and in ſpecie unlawfull, but ſecondarily, mediately, and in *genere*, by vertue of the general Divine Mandate which enjoyneth obedience unto rules, in all lawfull and honeſt things; It is alſo in the ſame degree very near, and upon the ſame ground unlawfull for ſuch as execute any Office, Function, or *particular Calling*, as we uſually tearm it, though perhaps improperly that ſtate or condition of life wherein a man is placed to do any thing incongruous with the nature or rule of that function or *calling*. For a thing may be lawful to a Civill Magiſtrate, which is not to a Miniſter of the Goſpel, and ſo on the contrary that may be lawfull to the Merchant, which is not to the Husbandman, that to the Maſter which is not to the ſervant, that to the married man, which is not to the batchelour, and the like; God having generally given them this Law, that every of them faithfully perform the duties of his calling, and modeſtly contain himſelfe

within the bounds thereof. If therefore an *Engliſh Merchant* ſhould ſwear to ſend Wooll to *Hamburgh*, or any other merchandiſe prohibited by law to be tranſported out of this Realm; or if any *Magiſtrate* ſhould ſwear that he would not puniſh theft, or adultery; or a *Biſhop* or *Presbyter*, never to preach nor adminiſter the Sacraments; or an *Hinde* not to obey his Maſter, commanding him to yoak his Oxen or reap his Corn; whereof the firſt is repugnant unto the *Laws of the Kingdom*, the reſt unto the *conditions of proper vocations*: All theſe oaths would be of a thing in that degree whereof I have ſpoken *unlawfull*; and the oaths themſelves for that reaſon *unlawfull*, and would *not ordinarily oblige*. I ſay not *ordinarily*, becauſe there may perhaps be caſes in which an oath that ſeemeth repugnant unto ſome Law of *Community* or *Vocation*, though it ought not to be taken, may nevertheleſs being once taken become obligatory. For example, in the penall Law disjunctive; ſuppoſe this to be the Law of the City, *No Citizen thereunto elected ſhall refuſe the office of Pretor; if he do, he ſhall be fined an hundred Crowns. Caius* a Citizen thinking himſelf

himſelf unfit to bear office, or to avoid ſome inconvenience, that might happen unto him from thence, ſweareth that he will never be Pretor of the City; he is choſen by the Citizens, he excuſeth himſelf by his oath, they regard not his oath, but urge him to accept of the Magiſtracy; What is the Law in this caſe at the bar of Conſcience? I anſwer, he ought not to have ſworn, eſpecially not compelled thereunto by any neceſſity; for he might have refuſed though he had not ſworn. Nevertheleſs having ſworn, he ſeemeth to be obliged, and not be in a condition without perjury to comply with the deſire of the Citizens: he is bound therefore to pay the fine, and to refuſe the Pretorſhip. I would be underſtood preciſely, in reſpect unto the point to which I now ſpeak, *viz.* the matter of the oath, and alſo preciſely, in reſpect to the repugnants thereof unto the law of the City: For in reſpect of the ends or cauſe, nay even in reſpect of the matter it ſelf, as it is an hinderance of a greater publique good, or for ſome other conſideration, there may be juſt reaſon in it to make the obligation void. Nevertheleſs *ordinarily*, as I have ſaid, an

oath made againſt the Law of an *whole Community*, or of a *particular Vocation*, obligeth not. And thus much be ſaid of the things in themſelves unlawfull.

Sect. X.

THe things which are not unlawfull *ex ſe*, yet are unlawfull *ex accidente*, follow. Now a lawfull thing happeneth to become unlawful, either by the error of the party ſwearing, or by ſome ill effect of the thing ſworn. Wherefore the *third caſe* is, where a man promiſeth by oath performance of a thing perhaps lawfull in it ſelf, which nevertheleſs he believeth to be unlawfull, or feareth not to be lawfull; as if a man (before theſe times) upon his admiſſion to a Benefice (as they call it) Eccleſiaſticall, ſhould have promiſed to obſerve all the rites commanded by Eccleſiaſticall Law in publique Service, as the Surplice, ſign of the Croſs at the Font, kneeling at the Sacrament of the Lords Supper, and the like; which he nevertheleſs through ſome light prejudice, thought to be ſuperſtitious and papiſticall; What is the obligation in this caſe? I

give

give you *three* things by way of anſwer. *Firſt*, I ſay, that ſuch an oath, during ſuch an error cannot be taken without great ſin: for he ſinneth grievouſly, who ſinneth againſt his Conſcience though erroneous; the judgement of the underſtanding, being unto every man the firſt rule of working, if the will follow not that judgement, ſwerving from the rule it muſt neceſſarily be carried into obliquity. It is an old ſaying, *He who goeth againſt his own conſcience, is on his way to Hell.* Certainly he who ſweareth unto that which he thinketh to be unlawfull, had ſworn unto it, though it had been really unlawfull; and ſo the thing though lawfull to another, is as to him unlawfull. It is the Apoſtles ſentence, *Rom.* 14. 14. where he diſtinguiſheth between that which is *unclean of it ſelf*, and that which is *unclean to another*, plainly teaching that that thing which is not unclean, nor unlawfull of it ſelf, may nevertheleſs be unclean, and unlawfull unto him who eſteemeth it to be unclean, or unlawfull. *Secondly*, I ſay, that ſuch an oath *obligeth not*: the reaſon is manifeſt by the third hypotheſis; for an oath cannot take away a former

obligation, nor introduce an obligation contrary unto it. But the oath which is taken againſt the dictate of Conſcience was preceded by another former obligation ariſing from that dictate. For the dictate of Conſcience, whether right or erroneous, ever bindeth at the leaſt not to act againſt it. Now a ſubſequent oath cannot remove this obligation, but becometh rather invalid it ſelfe, and loſeth all ſtrength and vigour. *Thirdly*, I ſay, if the party ſwearing being afterwards better informed, acknowledge and correct his error, the oath which at firſt obliged not, beginneth from thence forth to oblige; for the power of obligation is as it were naturally and inſeparably in an oath, as the power of moving downwards is naturally and inſeparably in a ſtone, which power is always ready to put forth it ſelf, and to proceed unto act, except it be hindered by ſome impediment: Wherefore as a ſtone that it may move again, after it hath reſted a while, needeth not any other new power to be derived unto it from without, but of its own nature, the obſtacle being removed preſently deſcends,

deſcends: ſo an oath, that obligation of erroneous Conſcience, which at firſt withſtood its operation, being removed, without any delay, or need of other help, is of its own force obligatory.

Sect. XI.

THere are other caſes concerning *things unlawfull by accident*, in reſpect of the evill effect of the ſame; to wit, as they may be *impeditive of good*, or *cauſative*, or at the leaſt (for we muſt uſe ſuch words) *occaſionative of evill*. A good thing impeded may be antecedent or future. The *fourth caſe* therefore is, where the thing ſworn ſeemeth to be unlawful in that it hindereth the performance of ſome antecedent good: of a vow imagine, or of a promiſe firſt made: as if he who had firſt bound himſelf with a vow to ſome work of piety or charity, ſhould afterwards take an oath which might hinder the performance of his former vow. For example, if bound by a vow to give weekly the half of his gain to the poor, he afterwards ſwear to contribute his whole gain to the uſe of war; or as if *Caius* having promiſed to

ſell his land to *Titius* at a certain price, ſhould afterward ſwear to ſell it unto *Julius* at a greater rate. This caſe hath no difficulty, for it is clearly anſwered, and the anſwer is founded upon the third Hypotheſis, That ſuch an oath is neither *lawfull*, nor *obligatory*; becauſe that former obligation however contracted, whether by agreement, or by vow, or by bare promiſe, or by meer duty remaineth valid, and putteth a bar upon all ſubſequent acts to the contrary.

Sect. XII.

THe *fifth caſe* is, when that which is ſworn ſeemeth *impeditive of ſome future good*, as if one ſhould ſwear that he would never be ſurety for another, nor a Miniſter of the Goſpel, being of parts very fit for that calling; or having the ſole knowledg of ſome uſeful Art, never to diſcover it unto any man; or the like. The reaſon of the doubt is, that the leſſer good, in compariſon with the greater good, holdeth in ſome ſort the proportion of ill; wherefore an oath, though otherwiſe honeſt, yet if it hinder

der a greater good, ſeemeth to be evill. Of the doubt in this caſe, no general and certain ſolution, able to comprehend all particular ſorts, can be given, becauſe it is imployed in comparing the greater and leſſer good, which depend th very much upon the laying of circumſtances, wherein the variety being infinite, all cannot be comprehended under certain and definite rules, but the matter for the greateſt part muſt be left to the arbitration of ſome prudent perſon thereupon to determine, as by weighing arguments on both ſides, with as much faith and diligence as he can, may at length ſeem unto him *pro hic & nunc* moſt expedient; yet in the mean time ſeeing it is not ſimply true (except warily underſtood) that every man is always bound to do that which is beſt; for ſolution of the doubt, in this caſe it may be ſaid that an oath is not unlawfull, nor loſeth its force of obligation preciſely, becauſe it hindereth a greater good, unleſſe other circumſtances alſo concur (as they uſually do) which may either prove it unlawfull, or not obligatory. An example will illuſtrate the thing: *Caius* is taught by the inventor *Titius*, a medicine

cine of ſoveraign vertue or ſome other excellent art, but upon condition of an oath, That during the life, or without the leave of *Titius*, *Caius* ſhall not diſcover the ſame unto any man. The non-communication of ſo great a ſecret ſeemeth to be againſt the publick good, and yet by the dictate of reaſon *Caius* is obliged *bona fide* to perform what he promiſed, otherwiſe injury would be done unto *Titius*, whom it concerneth, that the ſecret be not divulged, which without ſuch an oath firſt taken, had not been communicated unto *Caius* himſelf.

Sect. XIII.

IT remains in the next place that we treat of things *unlawfull by accident*, in as much as they ſeem to be *cauſative*, or at the leaſt *occaſionative of ſome evill*, and that either to the party ſwearing, or to others. Wherefore the *ſixth caſe* is, where the thing ſworn is hurtfull to the party ſwearing, either by bringing upon him certain *temporall loſs*, or by expoſing him to the danger of *temptation*. As if *Caius* ſhould ſwear unto *Titius* the ſpend-thriſt

thrift to lend him an hundred Crowns, never a thousand to one to be repaid, which would be to his loss; or if *Fabius* at the request of his wife made upon her death bed to defend her children from a step-mother, should binde himselfe by oath from second marriage, whereby perhaps he might expose himself to the danger of *burning*. I answer *first*, that this kinde of promise is not rashly, or without mature deliberation to be made, nor except there be weighty reason for it, yet that it is not simply unlawfull: for although all *occasion of evill* be diligently to be avoided; nevertheless seeing nothing which is not in it self, but by some other reason unlawfull, can necessarily, and universally be an *occasion of evill*; and seeing there is not any thing simply and in it self unlawfull, only because it may be an *occasion of evill*; all promises of this kinde ought not simply to be condemned, especially if probable danger of any great inconvenience, upon diligent consideration appeared not unto the party swearing at the time when he took his oath. *Secondly*, I say, if the oath turn to the temporall hurt of the party swearing

ſwearing only, without injury to a third perſon; the party ſwearing is bound though to his great loſs, except the party to whom he hath ſworn be willing to releaſe him of his oath. They are the expreſs words, *Pſal.* 15. *That ſweareth to his own hurt, and changeth not.* Where in the *Hebrew*, the firſt word is of the preter tenſe, (*juravit in malum*) the later of the future (*& non mutavit*) as if he ſhould have ſaid, It is the duty of a godly man, having ſworn unto his neighbour that which he cannot perform without his own great damage, to be conſtant nevertheleſs, and to ratifie that which he hath promiſed, and (as it is in our Text) to doe according unto all that proceeded out of his mouth. *Thirdly*, I ſay, the oath obligeth, though it expoſeth unto hazard of temptation, except it be otherwiſe vicious. Becauſe if that might ſuffice to make an obligation void, there would hardly remain any thing that might oblige, ſeeing through the cunning of the Devill and corruption of the heart of man there is nothing ſo free from danger of evill, but it may become unto our deſtruction (except we be protected through the mercy of God)

God) a ſnare of temptation: yet through the aſſiſtance of Divine grace, this obligation ſhould rather be an uſefull buckler againſt the darts of the Tempter, for as much as thou art engaged to yeeld the leſſe, and ſtrive the more, becauſe thou art bound by the Religion of an oath, not to doe that whereunto thou art tempted.

Sect. XIV.

THe ſeventh caſe is, where the thing ſworn ſeemeth unlawfull in reſpect of the *danger of ſcandal*, which might thereby be given unto others, we through our fact affording them occaſion of ruine. Many warnings, and thoſe very heavy ones to avoid ſcandall, are extant in the Epiſtles of St. *Paul*, that eſpecially to the *Rom.* 14. & 1 *Cor.* 8. 10. And verily a good Chriſtian ought to take moſt diligent heed in all his converſation, not only to preſerve his own, but not to offend anothers Conſcience, not only to ſeek his own, but the convenience of many, and to conſider as well what is expedient for them as lawfull for himſelf, leſt otherwiſe

wiſe he abuſe his liberty to the deſtruction of his brother. But how far lawfull things ought to be forborn that ſcandal may be avoided, is neither in few words to be ſaid, nor the buſineſs of this preſent diſcourſe. All that ſeemeth fit to be ſaid of it in this place is, that the *danger of ſcandall* only, if there be no other reaſon why the thing ſhould be thought unlawfull, is not ſufficient to hinder the obligation of an oath taken, as hath been ſaid in the precedent caſe of the danger of tentation, ſeeing that either holdeth in all points the ſame proportion.

Sect. XV.

HAving now weighed the chief caſes of things *impoſſible*, *neceſſary*, and *unlawfull*, I proceed to the reſt of the other doubts. The *fourth doubt* is of an oath *rei liberæ*; that is to ſay, of a thing which is neither neceſſary, nor unlawfull, but in the mean and indifferent. In which indifference ſeeing it ariſeth from a twofold cauſe, from the *will of the Legiſlator* neither commanding nor forbidding; and from the *levity of the thing*;

thing; two caſes anſwerably occur. The *firſt caſe* is, when a thing is not by any precept, or interdict Divine or humane legitimate ſo detrrmined, but every man *probic & nunc*, according to the exigence of circumſtances, may at his choyce doe or not doe as he ſeeth expedient; *Let him doe what he will, he ſinneth not*, 1 *Cor.* 7. 36. As if *Caius* ſhould ſwear to ſell his land to *Titius*, or to lend him an hundred Crowns; The anſwer is brief, an oath in this caſe is both lawfull and binding. The *ſecond caſe* is, where a thing is ſo triviall, that it is not worth the deliberation of a wiſe man, nor matters a ſtraw whether it be done or not done, as to reach up a chip, or to rub ones beard, *&c.* or for the ſlightneſs of the matter is not much to be eſteemed; as to give a boy an apple, or to lend a pin, *&c.* An oath of a thing indifferent after this manner is altogether *unlawfull*. For it argues either irreverence of the name of God, (if through an habit of ſwearing, as it is too common) it be uſed unawares; or if wittingly and knowingly, of open contempt; for God is not to be invoked witneſs, except in doubts worthy his vindication,

vindication, and where the cauſe is as well weighty as juſt. And in this all agree. But what of the *obligation?* It is the opinion indeed of moſt Romiſh Caſuiſts, that an oath or a ſmall and triviall thing is in the natu e thereof nul, and bindeth not; becauſe forſooth a ſmall matter is not proportionable to an oath, and *Lex non curat de minimis* But I wonder they who would be thought to ſee into other things like Lynx, ſhould be blind in one ſo apparent, except it be done to give place unto that rotten diſtinction of *mortall*, and *ven. all ſins*, a leaven with wch they have ſoully corrupted the whole lump of moral Theology. But that an oath is binding in a matter of the leaſt moment is evident; *Firſt*, becauſe weighty, and trivial things have a like reſpect unto truth and falſehood. *Secondly*, becauſe in the aſſertory oath, he who affirms otherwiſe of the thing (be it never ſo ſmall) then it is, is perjured; wherefore *a ſimili*, he alſo in the promiſſory, who doth otherwiſe then he ſweared to do. *Thirdly*, becauſe God would elſe be made witnes of falſehood. *Fourthly*, becauſe every party ſwearing is bound to perform all he promiſed.

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as far as he is able, and it is lawful: but to give an apple to a boy is both possible and lawfull; he is bound therefore to perform it, he ought not so to have sworn, but having sworn he ought to fulfill his oath.

Sect. XVI.

The *fifth doubt* remaineth, where we swear unto a thing *indefinite* and *uncertain*; and it containeth three cases especially. The *first case* is, when one man delivereth himself as it it were into the power of another, promising to perform whatsoever the other will impose upon him; as when a Prince swears unto his favorite, to give him in acknowledgement of his faithfull service whatsoever he shall desire; or a friend, or servant, swears unto his friend or master to obey what he shall command. In this case I say *first*, that this kind of oath, if it be simply understood according to the tenor of the words, is *unlawful*. He injureth God, whose servant every man is, who maketh himself a *servant to man* and slave to anothers rashnesse. *Secondly*, I say, that something else must

neceſſarily be underſtood to make it lawfull. For example, I ſwear to doe as you will have me, meaning whatſoever is juſt, honeſt, poſſible; and ſo far, and in this ſenſe it obligeth. The Kings of the *Perſians* and *Jews* ſeem antiently to have uſed this, as a ſolemn form, and for the fuller oſtentation of their grace, and magnificence, to have ſworn indefinitely; *Ask what thou wilt, and it ſhall be given thee even to the half of my Kingdome*; ſo ſware *Aſſuerus* King of *Perſia* unto the Queen his wife; and ſhe asking a juſt and neceſſary thing, he according to his oath commanded it to be done. But *Solomon* having promiſed almoſt in the ſame form the Queen his mother to give her what ſhe ſhould ask, and ſhe in favour of *Adonia* asking a thing, which *Solomon* already acquainted with the ambition of the man thought too unjuſt, *Solomon* notwithſtanding his oath, fulfilled not the the deſire of his mother. By which fact he ſufficiently ſhewed that he ſware with no other intention of performance then as the thing asked ſhould be juſt. By which example he hath taught us, that in oaths indefinitely made unto

to the will of others, the condition ever to be underſtood, is, if the requeſt by the rule of good and honeſt be modeſtly asked, it is juſt and reaſonable it ſhould be faithfully performed. There is yet a third example of an oath of this form, *Matth.* 14. where *Herod* the *Tetrarch* to favour the Dancereſſe his brothers daughter, ſware to give her what ſhe would ask: ſhe asked a moſt wicked thing, the head of an innocent man, and not condemned, to be cut off, and put in a Charger. The King commanded it to be done *for the oaths ſake, and them which ſate at meat with him.* For alas! the religious, and the baſhfull Prince was aſhamed in the preſence of ſo many gueſts not to fulfill that, though with moſt execrable wickedneſſe, whereunto he had bound himſelf by the Sacrament of an oath. Let *Herods* be an example unto us of warning, but *Solomons* of imitation: and let us remember that an oath ſo indefinitely made, is ever to be underſtood with a *juſt exception*, and to be extended unto thoſe things only which in probability were thought upon during the act of ſwearing, and not

unto thoſe which if they had then been thought upon, the oath had not been taken.

Sect. XVII.

THe *ſecond caſe* is, when ſubjects are required to take an oath for preſervation and defence of Laws and Liberties, Priviledges, Prerogatives, and preheminences of ſome ſuperiour power, as of a King, a Commonwealth, or Lord Paramount; ſuch as are amongſt us the oaths of Homage, of Royall Supremacy, and the like. No man denyeth theſe oaths, either to be *lawfull* or *obligatory*; but in reſpect of the frequent incertainty of the Laws whereunto they relate, it may very well be doubted *how far* they *oblige*. Doubtleſſe the Subject to his power is obliged to defend all rights which appear either by law or cuſtome Legitimate, whether defined by the written Law, or in force through long uſe of time, or preſcription, that is, ſo far as they are known, or may morally be known. But he is not equally obliged unto the obſervation of all thoſe which

which are controverted or doubtfull, eſpecially ſince powerfull men are accuſtomed to ſtretch their Teathers, and leap over the Landmarks of their neighbours, not contenting themſelves within the bounds of their own right. Nevertheleſſe a ſubject ought to be always prepared in minde, ſo ſoon as the juſtneſſe of thoſe things which are doubtfull ſhall appear, to acknowledge and defend them.

Sect. XVIII.

THe *laſt caſe* is, where an oath is required of member of any Community, as of a City, Univerſity, or Colledge, Society of Merchants, or Handicrafts men, to *obſerve the Statutes*, Cuſtomes and Liberties of that Corporation; If you ask what the obligation is? I anſwer, *firſt*, that the party ſworn, is obliged ſimply unto the obſervation, as far as in him lyeth, of all *fundamentall Statutes*. By *fundamentall*, I underſtand ſuch as moſt neceſſarily and nearly concern the preſervation of the publique eſtate, order, and honour of

the whole body or Community. But *Secondly*, not that alwayes and neceſſarily, to the rigour of the letter, but as they are put in practiſe, and received by cuſtome, and as they are with approbation obſerved by others. *Thirdly*, concerning the leſſer Statutes appertaining only unto externall form and decency, which by the condition of the matter, or form of the Sanction, or any other probable conjecture, a diſcreet man may judge not to have been framed with intention of *rigid obligation*; he is obliged to obſerve them ordinarily; yet ſo as without ſcruple of conſcience he may ſometimes, having juſt cauſe for it, pretermit that which is preſcribed to be done by ſome Statute, provided it be without ſcandall or contempt. *Fourthly*, the obligation is extended unto Statutes to be made for the future, provided they be poſſible, juſt, and honeſt. *Fifthly*, if any Statute after the oath taken be abrogated or grown out of uſe, the obligation of the oath as to the Statute ceaſeth; and he is not bound any longer to obſerve it, unleſſe he have ſworn in expreſſe words unto the matter it ſelf, decreed by that Statute. For

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in that caſe, though the Statute be taken away, the obligation remaineth. *Sixthly*, ſeeing Statutes of Corporations be very many, and many of them unknown to many, and that it is moſt difficult, nay ſcarce poſſible to obſerve them all exactly, and to an haire, he who ſhall behave himſelf ſo honeſtly that willingly he omitteth nothing appertaining to his duty, and is morally diligent to attain the knowledge of all thoſe Statutes which tend thereunto, and reſolveth faithfully and without ſcandal to be ſerviceable unto the eſtate, honour, and peace of his Community, as far as humane frailty will permit, performeth doubtleſſe with a very good conſcience his faith given for the obſervation of the Statutes; and by the rule of juſt and honeſt, diſchargeth the duties whereunto he obligeth himſelf. And the like is to be underſtood of the publique *Laws* of a *Kingdome*.

Sect. XIX.

And this ſhall ſuffice to be ſpoken of the firſt Claſſis of Caſes. But leſt it be thought my intention to permit too great a licence of oaths, becauſe I have ſo often ſaid that this or that kinde of oath *is not unlawfull*, I thought fit maturely to advertiſe you, that I have ſaid nothing this day, nor ſhall hereafter, that may give any man reaſon to believe it lawfull for him to ſwear at his pleaſure, it being well known unto me that an oath is a ſacred thing, not without great neceſſity, and then ſeldome, and with much reverence to be uſed. But my meaning throughout is, that an oath upon this or that occaſion is not ſimply and generally unlawfull. For example, when I ſaid an oath *impeditive of a greater good* is not unlawfull; or an oath *of an indifferent thing* is not unlawfull; my ſenſe was, that an oath ought not therefore to be concluded ſimply, and generally unlawfull, (ſo it have all the reſt of the due conditions) only becauſe it is *impeditive of a greater good*, or only becauſe

becauſe it is of an *indifferent thing*, or which comes all to one, that there is not in thoſe conſiderations any ſuch impediment, but it may be lawfull, if it be otherwiſe neceſſary, and in all other reſpects duly qualified.

The

The fourth Lecture.

Containing seventeen Cases.

Summary..

1. *The efficient cause of an oath, and the things to be handled, proposed.*
2. *Oaths of children.*
3. *Oaths of mad men and fools.*
4. *Oaths of men drunk and enraged.*
5,6. *Oath of one being in the power of another.*
7. *The authority of him, who giveth an oath.*
8. *Faith to be kept with enemies, heretiques, perjured persons.*
9. *Whether an oath oblige the Heirs of the party swearing, and how far.*
10. *Oath to be performed by the Heir or Successor.*
11. *Voluntary oaths.*

12. *Oath*

12. *Oath obtained by fraud.*
13. *Oath taken through ſome light fear.*
14. *Oath extorted by force or fear.*
15. *Money promiſed unto a Theif ought to be paid.*
16. *Solution of objections.*
17. *Whether ſilence promiſed unto a Theif be to be kept.*

Sect. I.

THe principall difficulties appertaining properly unto the *matter* of an oath, being finiſhed in the foregoing Lecture; we proceed unto the ſolution of thoſe doubts, which may be reduced unto the *Efficient cauſe*. The *Efficient cauſe* of an oath is, as to our purpoſe twofold; the *Agent*, to which effect properly belongeth, and the *Impulſive* cauſe. Again the agent is either principall, or more remote from the effect. For as two perſons at the leaſt, to wit, the perſon *ſwearing*, who engageth his faith, and the *deferent*, as they ſpeak who follow *Cicero*, or perſon to whom the engagement is made, muſt as tearms of this relation concur in the obliga-

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tion of an oath. So each hath his part in the work. The first, and especiall belongeth to the person swearing, the second to the Deferent, or person to whom the oath is made. In both agents, the *condition* or aptitude of the *person* is first to be considered, next *the extension of the obligation*: Wherefore in this kinde of efficient cause, such doubts are in the first place to be considered, as arise from the defect of some condition requisite on the part of the *principall agent* to qualifie him for an oath. And two things especially are requisite unto such a qualification, rational *judgement*, and lawfull *power*. For an oath ought to be taken with a minde both deliberate, and resolved to perform the promise; But he who is not indued with rationall judgement, can neither be deliberate, nor he who is not his own man, but in the power of another, make a stedfast and effectuall promise.

SECT.

Sect. II.

WHerefore the *firſt doubt* is, How far the oath of a perſon not indued with the faculty of judgement, obligeth? Which defect ſeeing it may ariſe from divers cauſes, divers caſes are therefore contained under this head. The *firſt* is of *Children* ſo ſoon as they attain unto the uſe of reaſon, which at what time of their age it may happen is not, nor do I think can be defined, ſeeing ſome are ſooner, and ſome later ripe; The Civil Laws of the *Romans*, and the municipall of moſt Nations, pitch upon certain years under which they admit not children either to take aſſertory oaths, or to be compelled unto promiſſory: ſuch amongſt us is the age of 16. he who is younger, is neither admitted to be a witneſſe in judgement, nor required to take the oath of Allegiance, nay if he have taken an oath, it is nul in Law; this is right at the Bar of Juſtice, not at the Bar of Conſcience. Children ſhould be taught from their tender age by their parents, and pupils by their Tutors, early to underſtand,

ſtand, and duly weigh the power and efficacy of an *Oath*, the guilt and puniſhment of *perjury*, that they may beware the wicked cuſtome of the one, and horrid crime of the other. For it can hardly be imagined of what neceſſary or lawfull uſe the oathes of children ſhould be, they being both unfit to judge, and not in their own power, unleſſe parents in whoſe power they are ſhould require it at their hands, for the faithfull performance of ſome commands. As fame reports *Hanibal*, about the ninth year of his age, to have been ſet by his Father *Amilcar* before the Altar during the time of Sacrifice, and there bound by oath to be a perpetuall enemy to the *Romane* name. But oh ſhame! what is become of Domeſtick Diſcipline amongſt Chriſtians? Children ſcarſe able to ſpeak, are heard in every ſtreet tearing the ſacred and dreadfull name of God with profane lips, and oathes, both without fear, and puniſhment: ſeaſoned with the abominable ſtench of which vice like new veſſels, it will hardly out when the cask becometh aged, and rotten. But I would not be carryed away with the tide

tide of grief, and indignation, I return to the point, and ſay, that *oathes of children* before they attain to years (as we call them) of diſcretion, or know what deceit is, through defect of judgement, are *neither lawfull, nor obligatory*. But ſo ſoon as they are capable of deceit, and can in ſome, though ſmall meaſure underſtand what the nature, and force of an oath is, which happeneth for the moſt part about the ſeventh year of their age, and earlier in many forward wits, or ſuch in whom malice ſupplyeth age; *the oath of a childe*, though it be abſolutely unlawfull (unleſſe that one caſe, if a parent require it, may be excepted) being taken obligeth, if there be in it no other impediment. The reaſon is, becauſe an act in its own nature obligatory, ſuch as is the act of ſwearing, proceedeth from a minde indued in ſome ſort with the faculty of judging.

Sect. III.

THe *ſecond caſe* is, of the oathes of *mad men*, and the *third* of *fooles*: to whom the vice of unſeaſonable belching

ing forth of oathes, even when they think leaſt upon it, is familiar; which although we may, and God who is moſt mercifull, and expecteth not an harveſt where he ſowed not, perhaps will forbear to impute unto them for ſin, becauſe it proceedeth from invincible error, yet moſt certain it is of every oath, and pronounced by our Saviour, that *it cometh of evill*; from the inſtigation of the Devill, and common corruption of mans heart, through which all the children of *Adam* are inflexible unto good, and wax unto all kinde of wickedneſſe: to make a doubt whether ſuch oathes be lawfull or unlawfull, were vain and uſeleſſe. For to weigh whether things be lawfull or unlawfull, belongeth to ſuch only as can in ſome meaſure judge, whether done or to be done they agree with their rule the Law of God, and right reaſon: which Law it were in vain to plead unto ſuch as are deſtitute of that faculty, and void of underſtanding; Certainly he who requireth reaſon of a mad man, is mad with reaſon. This kinde of oath therefore as much as it is the act of a diſtracted perſon, is in

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no wiſe binding; except otherwiſe frantick, he enjoy his reaſon by lucid intervals; in which caſe it bindeth no leſſe during the time he ſo enjoyeth the uſe of his reaſon, then one made by a man of ſound and repoſed judgement.

Sect. IV.

THe *fourth and fifth caſes* are of oathes made by men who are *drunk*, or *in rage*, *promiſing* or *threatning* ſomething, which in ſobriety and cool bloud they would not have promiſed or threatned. The reaſon of doubt is, that whereas ſome judgement, at the leaſt of a deliberate, minde is requiſite to make an oath obligatory; *Drunkenneſſe* and *wrath*, which are but ſhort fits of madneſſe, ſo perturb the judgement, and for a time take away the uſe of reaſon, that till the one have ſlept, and the other repoſed his minde, neither ſeemeth much to differ from a mad man. But of theſe oathes, this in the firſt place is certain, that neither kinde can be excuſed of ſin, but whether drunkenneſſe, or the vehemency of anger

aggravate the ſin which is the act of ſwearing, or rather extenuate it, all are not agreed, nor ſeemeth it poſſible to anſwer ſimply and ſufficiently unto this probleme by a ſingle affirmation, ſeeing judgement in the point depend-eth very much upon circumſtances. But be it as it will, the queſtion is not to this purpoſe. The nature of the doubt ſheweth it to be unfit, that a drunken or angry man ſhould ſwear at all, be-cauſe during that diſtemper he cannot ſwear *in judgement*, but muſt neceſſarily blab out whatſoever his wine or paſſion (which are *immoderate Counſellors*) ſhall perſwade, and which in cool bloud, and ſober, he would give any thing were unſaid, or unſworn; nevertheleſſe we muſt diſtinguiſh of obligation. For firſt, the thing whereunto he ſwears, is either unlawfull, or lawfull and ho-neſt: If *unlawfull*, (as it happeneth for the moſt part, eſpecially in oathes which fall vehemently from angry men blind-ed with eagerneſſe of revenge) it is evident that they oblige not; for it hath been ſufficiently demonſtrated that an unlawfull thing is not obligatory. Wherefore it was prudently adviſed

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of *Abigail*, and piouſly followed by *David*, when animated by the unworthy reproach of an ungratefull man he had ſworn the deſtruction of *Nabal* and his whole family, in that he diſpenſed with his oath, and withheld his hand from bloud. But if the thing ſworn be *lawfull*, as that often is, which drunkards oſtentatiouſly promiſe, then we muſt look *Secondly*, what and how great the exceſſe of drunkenneſſe was, whether in a degree to hinder only, or perturb the uſe of reaſon, or utterly to deprive of underſtanding, and transform the man into a beaſt. He who ſware having wholly loſt the uſe of his Reaſon, is bound when he is ſober, ſeriouſly to repent, both of his debauchery and raſh oath; but is not obliged to do as he ſware, becauſe during the act of ſwearing he had not that uſe of reaſon, without which there is no jndging of things with deliberate underſtanding. But the uſe of reaſon hindred only, and not ſo taken away, but that he might, though drunken, in ſome meaſure judge and reſolve, it ſeemeth he is in ſome meaſure obliged to fulfill his oath, at leaſt in part, if it may

be done without his very great hurt, and this both in reſpect of his antecedent deliberation ſufficient to binde, and for puniſhment of his raſhneſſe, that he may learn for the future to be wiſer, and lead a ſober life, leſt he ſtumble into that drunkenneſſe which will ſtick by him ſober. But if performance of the oath be to the great hurt or inconvenience of the party ſwearing; as if a man being drunk, ſhould promiſe to ſell the land whereupon he keepeth his family for little or nothing, he ſeemeth not to be obliged. The reaſon is, that ſuch a promiſe is a certain ſign of the abſence of his underſtanding. Wherefore ſeeing his minde was not fully free during the time of the oath, neither is the obligation full. Perhaps in this caſe it would not be the worſt end of an ill buſineſs, if it ſhould by both parties be wholly referred unto the arbitration of an honeſt and prudent man to be by circumſtances determined, what part of the thing promiſed, the party ſworn deſerveth to make good in puniſhment of his drunkenneſs, and temerity.

SECT.

Sect. V.

THe *ſecond doubt* is, of his oath who *is not in his own power*, but anothers. As if a ſon or pupill in the power of Parents or Tutors, or a ſervant in his Maſters, or wife in her husbands, or ſubject in his Princes, or a ſouldier in his Captains, or the like ſhould take an oath without permiſſion of his ſuperiour; What and how far availeth this oath? I anſwer, he who is under the power of another ought not to determine of any of thoſe things, wherein he is ſubject by an oath, without expreſſe conſent of his Superiour, where it may conveniently be had, or at the leaſt without his tacite conſent; that is, where the party ſwearing may probably conjecture that his Superior, if leave were asked, would not refuſe to grant it. If he doth otherwiſe, he ſinneth in ſwearing, neither is he obliged to perform what he ſware; nay he is obliged not to perform it, unleſſe his Superiour being made acquainted with the matter give him leave; as is at large explained by *Moſes* through this chap-

ter in the caſe of a *vow* or *oath*, (for as to obligation they appear the ſame in this verſe) made by a *Virgin*, whileſt ſhe is in the houſe of her Father, or by a wife in the houſe of her husband; The ſum is, that the vow of a Virgin, if her Father knew of it, and contradicted it not, is valid, becauſe by ſilence he ſeemeth to have given conſent; but if he contradicted it, it is void. And the ſame by Analogy may be determined of all ſuch as are under the power of others, ſo far as they are under ſuch power: which for two reaſons appeareth by that which hath been ſaid. *Firſt*, becauſe he doth injury unto another, who as it were by a right of his own, diſpoſeth of the right of another; but by our fifth Hypotheſis no man is bound by an act injurious unto another, ſeeing that an unlawfull thing obligeth not. *Secondly*, every man is bound by his duty to be ſubject unto his Superiour, and obey his will in thoſe things wherein he is Superiour: which obligation by our third Hypotheſis, a ſubſequent oath cannot take away. Wherefore we muſt neceſſarily conclude, that the oath of one who is

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under the power of another without the others consent, is neither *lawfull*, nor *obligatory*.

Sect. VI.

NEvertheless this conclusion is not so absolute, but it may admit of *two exceptions*; one respecting *the party swearing*, the other, *the consent of the Superiour*. For the party swearing, it is to be considered that there is scarse any person enjoying the use of reason so fully in the power of another, but he is at the least in some things at his own disposing; and of these every man may according to his discretion, even without leave, or acquainting his Superiour with the matter, so determine, as may be obligatory. The servant of *Caius* ought not to let out his labour to *Titius*, or lend, or give unto him any part of his Masters goods, without the consent of *Caius*; because things concerning the performance of duty, disposing of goods, or other service of the family, are wholly in the Masters power. But the servant or son of *Caius* may promise even without acquaint-

ing *Caius* to give unto *Titius* that which is *peculiarly* theirs, & if they confirm their promiſe by an oath, they are bound whether he will or no to perform it, becauſe each hath free right, to diſpoſe of that which is peculiarly his, and is as to that in his own power. *Secondly*, for *the conſent of the Superiour*, it is to be obſerved, that unto the ratification of the oath of the inferiour, precedent *conſent expreſſed*, is not neceſſarily required, but it ſufficeth if it be *tacite*, whether antecedent, or ſubſequent. *Tacite antecedent conſent* I underſtand to be, when from the lightneſſe or equity of the thing, or other probable cauſe it may very well be preſumed, that the Superiour if he had been asked, would have conſented unto, or at leaſt not forbidden the fact; as if *Caius* being from home, or not acquainted with the buſineſſe, his wife ſhould cloath a poor man with an old ſuit, or give an alms to a begger, or his ſon, or ſervant, upon his neighbours entreaty ſhould lend an Oxe, or a Cart, or other Inſtrument of husbandry or houſhold-ſtuffe, or ſhould contribute their aſſiſtance to build a neighbors houſe, or bring

bring home his Corn. *Tacite ſubſequent conſent* I underſtand to be, when the Superiour, in whoſe power it is to make any promiſe raſhly made by the inferiour, if he ſee cauſe, invalid; coming afterwards to knowledge of the promiſe, doth not preſently and openly contradict it, nor diſcovereth by any certain expreſſion, that he ſo far diſproveth the act, as that he would not have it fulfilled, according to that which is directed by *Moſes* in the 6. 8. and other verſes of this Chapter, where to make the vow of a daughter or wife invalid, an *open* and *mature* ſignification of the diſſent of the father or huſband is required. For it is not enough to render the daughters vow invalid, that the Father ſay it diſpleaſeth him, but he muſt openly declare againſt it, verſ. 13. 16. *ſi renuendo renuat*, and *tollendo tollat*; As if he ſhould ſay, he muſt conſtantly withſtand the fact, and by interpoſing his authority forbid the performance of that which is promiſed. It is alſo required that the ſame be ſpeedily done, verſ. 6, 8, 9, 13, 15. *upon the day that he heard it*; As if he ſhould ſay, if he conceal his diſſent

but

but a day, he hath eſtabliſhed the vow for ever; for he is preſumed to have been willing, who ſlowly expreſſeth himſelf to be unwilling.

Sect. VII.

HAving conſidered the party *ſwearing*, the *deferent* or perſon to whom the *oath* is made cometh in the ſecond place to be conſidered, and is concerned in the *third doubt*; wherein two caſes occur, one reſpecting his *authority*, the other his *faith*. The *firſt caſe* is, where we make a queſtion of his authority who requireth an oath of us. For if he be a *legitimate Superiour*, and ſo acknowledged by us, nor require other oath of us, then what is decreed by the Law, and confirmed by daily and approved cuſtome, no man doubteth but ſuch an oath may both lawfully be taken, and ought faithfully to be performed. But where he who requireth the oath, ſeemeth to have no right ſo to doe, but to uſurp a power which belongeth not unto him, it may very well be doubted whether it be lawfull to take an oath by him ſo offered; and if we

we take it, whether, and how far we are obliged by it. *Firſt*, I ſay, that a pious and conſtant man ought as much as in him lyeth to decline all oathes impoſed by ſuch as have no lawfull authority: not onely becauſe it is an ordinary thing to compell thoſe upon whom they exerciſe Tyranny unto unjuſt promiſes, but alſo beeauſe every man is bound to defend his right, and liberty to the utmoſt, and not tamely to thruſt himſelf into the yoake of anothers Tyranny. But *ſecondly*, if beſides command ſuch force be uſed as he cannot reſiſt, and there be no refuſing with out extreme danger, to avoid I ſay, the certain conſequence of a very great inconvenience, a pious man, but ſadly, heavily, and with ſome expreſſion of reluctancy, may take ſuch an oath, provided the words of the oath (which ſeldome hapneth upon this occaſion) contain nothing unlawfull in it ſelf contrary to known Law, or derogatory from the right of any third perſon; otherwiſe he ought to refuſe it, even to the hazard of his life, and to endure the utmoſt rather then oblige himſelf in an unlawfull bond. *Thirdly*,

he

he who hath taken an oath, given by a perſon, who had no lawfull authority, but in all other reſpects lawfull, is many wayes bound unto the performance thereof.

Sect. VIII.

THe *ſecond caſe* is, where hee unto whom the oath is to be made, is an Infidell, Heretick, or one who hath formerly broke his faith. *Firſt* I ſay, it is lawfull to ſwear unto an Infidel, Heretick, or perjured perſon; it was done by the Patriarchs, *Iſaac* and *Jacob*, alſo by *Joſhua*, and the Princes of the people of *Iſrael*; theſe made leagues with ſtrangers and Infidels, and on both ſides confirmed their mutual faith by ſolemn oathes. *Secondly* I ſay, that faith given unto ſuch is in any wiſe to be kept. We uſe to object unto Papiſts, that they hold *faith not to be kept with Hereticks*; wherein the *Jeſuites* of this age exclaim that great injurie is done unto them. They are aſhamed forſooth in ſo clear light openly to profeſſe a doctrine ſo wide of all right reaſon, and pernicious to humane

humane ſociety. But our men have proved, even by ſhewing the places, that ſome of their Doctors have defended that Concluſion, whoſe books are neither prohibited nor expurgated. But let them all deny it in words, this at leaſt is apparent, if we may judge of their opinion, either by the principles of their doctrine, or by their actions, and reaſon of thoſe actions, as their own Hiſtorians of moſt unſuſpected faith have related them, there is no ſuch cauſe why they ſhould ſo confidently exclaim that we have ſlandered them. In the mean time whileſt they would ſhift of this opinion, they tacitely acknowledge it either falſe or impious. The Prophets ſometimes reprove the Kings off *Judah*, eſpecially *Ezek.* 17. almoſt throughout the chapter, that they kept not their faith ſworn unto the Kings of *Babylon*; the place is remarkable, and by *Chryſoſtome* largely and elegantly explained. Nay in this kinde the faith of *Regulus* and others is renowned in Heathen ſtory, who made good what they had ſworn even unto *enemies*, and *Carthaginians* (a moſt perfidious Nation) though to the hazard of their lives.

Silius

Silius adorneth *Regulus* with this commendation, calling unto him as it were by an *Apoſtrophe.*

Their Fame to late poſterity ſhall ſound,
Faithfull to faithleſſe Carthaginians *found.*

But you will object perhaps thoſe vulgar ſayings, *To deceive a deceiver is no deceipt,* and *Cum Cretenſibus cretizandum.* To which may be added thoſe which *Grotius* uſeth, on the ſpeech of *Brutus,* in *Appian*; *Romans knew no faith nor Religion of an oath to a Tyrant*: the other out of the old *Tragedian,* where one ſaith, *Thou haſt broken thy faith*; the other replyeth, *Which I neither gave, nor give unto any faithleſſe perſon.* I anſwer, that theſe taken from common practiſe, rather ſhew what uſeth vulgarly to be done, then what ought to be done; or if you admit them for truths, that they are onely approveable in ſuch caſes, where the oath was taken upon condition; either expreſſed, as thus, *I ſwear to give you an hundred Crowns, if within a month you redeem your land which I have in Mortgage*; or at the leaſt tacite, as when two oblige themſelves by mutuall

mutuall oathes to fulfill mutuall promiſes *with mutuall reſpect*. For example; if *Chremes* the Maſter, ſwear unto his ſervant *Soſia*, to give him annually ten Crowns, and *Soſia* likewiſe ſwear unto *Chermes*, to ſerve him eight years; He of the two who firſt violateth his faith, preſently abſolveth the other from the bond of his oath. But if two oblige themſelves mutually in promiſes of different kindes, or not at the ſame time, or otherwiſe *without mutuall reſpect*, faith violated by the one, abſolveth not the others obligation, but each is bound to ſtand unto his oath, though the other have not performed his part. For example, a King ſimply, and without reſpect unto the allegiance of his ſubjects, ſweareth to adminiſter his government righteouſly, and according to Law; the ſubjects at another time ſimply, and without reſpect unto the duty of the Prince ſwear allegiance, and due obedience unto him; they are both bound faithfully to perform their ſeverall duties; nor would the King be abſolved from his oath, though Subjects ſhould not perform their due obedience, nor ſubjects

jects from theirs, though the King should turn from the path of justice.

Sect. IX.

HItherto *of the condition* both of the *Agent*, to wit, the party swearing as principall, and of the deferent or person to whom the oath is made as lesse principall: The *fourth doubt* followeth concerning *the extention of the obligation* in respect of both the persons; wherein two cases occur. The *first* concerneth the person swearing, *Whether, and how far the oath obligeth his Heirs, and Successors?* For example, *Caius* having bought a field of *Titius*, sweareth simply to pay him an hundred pounds within six months, within the time *Caius* dyeth, the question is, whether by vertue of the oath made, the Heire of *Caius* be bound to pay the money promised? I answer, the Heire of *Caius in respect of the thing*, which gave occasion unto the oath is bound to pay, forasmuch as he enjoyeth the field for which the money was promised: for the heire who inheriteth the estate of the person deceased, is bound *de jure*, to

to pay his juſt debts, it being moſt equall that an eſtate ſhould paſſe with the engagements that are upon it. Nethelesſe the heir is not bound *by vertue of the oath* made by the perſon deceaſed, by which means if he pay not, he is unjuſt onely, not perjured. The reaſon is, becauſe an oath is a *perſonall bond*, and contracteth a ſpirituall obligation only, at the internall Bar of Conſcience, not a civill, and temporall one at the externall Bar of Juſtice. But in perſonal things no man is bound without his own conſent. If it be ſaid, that *Caius* by his perſonall act may well oblige *himſelf and his heirs* unto ſome performance, as we ſee it daily done by inſtruments of Law; and therefore from the like, that he may alſo binde his heirs by an oath, eſpecially, if he ſay in expreſſe words, that he ſweareth for himſelf and his heirs. I anſwer, that there is not in either like reaſon. Becauſe the perſonal *obligation* which is in the Conſcience muſt neceſſarily be perſonall, as a mans conſcience is proper unto himſelf, and cannot paſſe into another: but *temporal obligation* followeth a temporall thing,

which seeing it may passe unto another person, may also lay an obligation upon another person; wherefore the heir is bound by the equity of the thing, not the vertue of the oath.

Sect. X.

THe *second case* concerneth the person to whom the oath is made, whether he who hath sworn the performance of a thing unto another, the party unto whom he sware being deceased, be bound to make it good unto *the Heirs or Successors* of the said party? I answer, ordinarily he is. It is certain the party swearing is obliged, if he expressed that he would perform the oath unto the heirs of the other. It may also be taken for granted, that he is bound though he expressed it not, if the oath taken relateth to *dignity*; because dignity varies not with the change of persons. Whence if any subject or souldier swear fidelity unto his King or Generall, the oath is to be taken as made unto them also who succeed unto that dignity. The same may be said in matter of *debt*, and sundry

dry other things wherein conſideration of *duty*, or *contract* gave occaſion of the oath. If you ſhall enquire how it cometh to paſs, that the bond of an oath being perſonall as to the party ſwearing, is not alſo perſonal as to the party unto whom the oath is made, but paſſeth unto his heirs, or ſucceſſors: or which comes to the ſame matter, how it cometh to paſſe that a man may engage himſelf *unto another, and his ſucceſſors*, though ſucceſſors be not expreſſed in the oath; but cannot oblige himſelf, and his ſucceſſors, though they be expreſſed in the oath. I anſwer, the reaſon of the difference lies in this, that in the one caſe obligation of a *mans ſelf* is meant, in the other, obligation of *others*. Any man may oblige himſelf ſpiritually as he will or pleaſeth, and therefore may by his proper act oblige himſelf, as well to the ſucceſſors of another as to the perſon himſelf; but a man cannot lay an obligation upon another unleſſe he alſo conſent, and therefore he can by his act ſpiritually oblige himſelf only. Now whereas I ſaid in anſwer unto the doubt in this caſe, that the party ſwearing is *ordinarily* obliged; the reaſon why I ſaid ſo is, becauſe it may be that ſometimes he

is not obliged; for ſeeing that the intention of the party ſwearing, ought to be judged of according to the nature of the thing, and ſubject matter, where from the nature of the thing promiſed, and other circumſtances it may probably be conjectured, that the party ſwearing intended only a perſonal promiſe unto the perſon unto whom he ſware, and not unto his ſucceſſors, the obligation of the oath divolveth not unto thoſe ſucceſſors.

Sect. XI.

BUt of *active cauſes* this may ſuffice, I paſſe to the *impulſive*, which are partly externall, and partly internall. *Internall*, when a man through the meere motion of his own will, not compelled by any other, freely offereth himſelf to take an oath, or through ſome tranſportation of anger, love, or other paſſion of a perturbed minde, or through delight in ſin, and impious cuſtome of ſwearing raſhly, and without judgement, beſprinkleth his diſcourſe with oathes. Which vice, both in reſpect of the heavineſſe and frequency of the ſin, I could wiſh were more often, and vehemently reprehended in Sermons, as

I ſee it was diligently, and ſharply done in his time by the moſt devout man, *John Chryſoſtome*, leſt by the juſt judgement of God, *through oathes the earth mourn*, and the Lord ſwear in his wrath, that he will not hold them guiltleſſe, who ſo contemn his dreadfull Name, that they fear not to invoke his moſt ſacred Majeſty as witneſſe, and arbiter without any neceſſity. But I ſhall not ſay much concerning oathes of this kinde. All ſpontaneous oathes, are abſolutely forbidden, except upon weighty and neceſſary occaſions. It will be worth our while, to hear *Auguſtine* of himſelf; *I ſwear*, ſaith he, *but as I conceive compelled thereto by great neceſſity, whileſt I ſee that I am not beleeved without it, and that it is not expedient for him who believeth me not, not to believe me.* As if he ſhould have ſaid, we may only then ſwear, when it is expedient that we be believed, and cannot be believed without we ſwear; And in this caſe (in which only it is lawful) a voluntary oath is the more binding, for being voluntary; becauſe there is no ſtraighter obligation then that which we take willingly upon our ſelves.

Sect. XII.

WHerefore letting theſe paſſe, I proceed to *externall impulſive cauſes*, which are eſpecially two, *Deceipt* and *Force*. The *fifth doubt* therefore is, of an oath into which we are inveigled by craft and deceit, that is, when one man led into errour by another mans word or fact, ſweareth to performe ſomething, which if he had not been deceived by another, he would not have ſworn. Of which we have an illuſtrious example in *Joſhua*, and the Princes of the people of *Iſrael*, who deceived by the *Gibeonites*, faigning themſelves to be ſtrangers come from a far countrey, to deſire a league with the people of God, admitted them unto the league, and ſware a peace with them; Nor did the *Iſraelites* when they found themſelves deceived preſume to retract the oath, knowing themſelves bound by the Religion thereof, but granted life and peace unto the *Gibeonites*, as they had contracted: Nevertheleſſe they found out an expedient, (impoſing upon them the condition of ſervitude in the vileſt offices)

offices) whereby the *Gibeonites* might pay for their craft, be kept in their duty, and not be able for the future to hurt *Iſrael*; of which fact ſaith *Ambroſe*, *Joſhua thought not the peace which he had given to be revoked, becauſe it was confirmed by the bond of an oath, leſt whileſt he argued others perfidious, he ſhould break his own faith.* By which example it is plain that an oath, though obtained by deceit, hath the ſtrength of obligation. And leſt that any man ſhould think that *Joſhua* and the Princes were too ſuperſtitious in this matter, they reſiſted not only the people who thought the *Gibeonites*, notwithſtanding the oath, ought to be ſlain, rendering this reaſon of their advice, *We have ſworn unto them by the Lord God of Iſrael, now therefore we may not touch them.* But God ſo approved afterwards of the thing by a double ſign. One when he beſtowed upon *Joſhua*, fighting for the *Gibeonites* againſt the Kings, who had made a confederacy for their deſtruction, a remarkable *Victory*, accompanyed with an illuſtrious miracle; the other, when above an hundred years after, King *Sauls* unjuſt violation of the League made

with the *Gibeonites* was punished with three years famine, and at the length expiated with the death of seven of his sons, by Gods expresse Command publiquely hanged.

Sect. XIII.

NEvertheless this case, will admit of a distinction. For the error whereinto the person sworn is led by the deceit of another, if it be about a *circumstance only*, or about the *cause* of a thing, as if it were *extrinsick* and accidentall, taketh not away the obligation, as appeared but now in the errour of the *Israelites* concerning the *Gibeonites*. The like might be said in case *Caius* should swear to take the widow of *Titius* to wife, beleeving her though poor to be rich, he must take her, this error rendereth not his oath invalid: and the the like is to be said of oathes of the like kinde. But if the error be about the *substance* of the thing, or its *proper cause*; as if *Caius* should swear to marry this particular woman under the name of *Titia*, beleeving her to be *Titia*, though she be not, & afterwards should find his error, he

he is not bound by oath; for an error in the ſubſtance of the thing, which was the proper cauſe of the oath, rendereth the promiſe invalid, and obligation void.

Sect. XIV.

THe *ſixth* and laſt *doubt* is, *of force*, or of an oath extorted by fear, againſt the will of the party ſwearing, in ſuch manner as if the fear were not, he would not ſwear; and truly this is a difficult and intricate queſtion; nevertheleſſe I will endevour to explain it with as much brevity and perſpicuity as I can. The *firſt caſe* is, where the *fear* is *ſlight*, and ſuch as cannot eaſily affect a conſtant man, as if through the fear of unjuſt cenſure, or of deriſion, or diſpleaſure of ſome powerfull perſon, a man ſhould promiſe by oath the performance of ſomething which would be inconvenient for him, and ſuch as, were it not for the fear, he would neither doe nor promiſe. In anſwer, I muſt firſt repeat which in the whole matter of oathes is moſt religiouſly to be obſerved, that if any thing be propoſed to be ſworn, which

is

is againſt the Law of God, againſt the duty of a Chriſtian, againſt a vertuous life, againſt the Laws of the Countrey, againſt a former obligation, or in any other reſpect unlawfull, ſuch an oath ought not through any hope of profit, or fear of danger; to be either taken, or performed. This preſumed, I ſay, that a ſlight and empty fear ought to be contemned by a valiant man, (that is by an honeſt; for he cannot be honeſt who is not valiant) and every oath of this kinde to be conſtantly and boldly refuſed. *The righteous are bold as a Lyon, Prov.* 26. 1. of which fortitude, he who is deſtitute can hardly doe any thing worthy of a good man. For *he that obſerveth the winde ſhall not ſow, and he that regardeth the clowds ſhall not reap*, ſaith *Solomon, Eccleſ.* 11. 4. Nay it can hardly come to paſſe but he ſhall doe many things unbeſeeming a good man; for by the Teſtimony of the ſame *Solomon, Prov.* 29. 25. *The fear of man bringeth a ſnare.* But if any man being overſeen, through want of courage, have ſuffered himſelf to be enſnared, *he hath bound his ſoul with a bond*, and is obliged to perform what he promiſed.

SECT.

Sect. XV.

THe *ſecond caſe* is, where fear is great and juſt, and ſuch as may affect a conſtant man, as the fear of captivity, loſs of all his goods, of infamy, torture, and (which is *the King of fear*) of death it ſelf. I ſay *firſt*, as before, if the oath contain any unlawfull thing, it ought not to be taken by any honeſt man, though to ſave his life, nor taken can be obſerved without ſin. Hearken oh ye Chriſtians unto the golden ſpeech of an Heathen.

The man who's juſt and ſteady to
Himſelf, arm'd Tumults cannot bow;
Nor awed by the Tyrants look,
Is from his ſtable purpoſe ſhook. *Hor. 3. lib. 2. ode.*

Secondly I ſay, If a matter be extorted by force, or prevalent fear, which is neither unlawfull, nor injurious to any man, but more or leſſe inconvenient onely unto the party ſwearing; as if a Traveller falling amongſt Theeves, who with their ſwords at his breaſt, ſhould threaten him death, unleſſe he ſware unto them to ranſome his life, with a ſum

ſum of money, the party may in this caſe *lawfully* promiſe the money, and ratifie the promiſe with an oath. The reaſon is, that of two ills propoſed, a man may, and a wiſe man ought to uſe the leſſe, and the loſſe of money is a leſſe ill then the loſſe of life. *Thirdly*, I ſay, that this oath *obligeth*, and that the money promiſed unto the Theeves, is in any wiſe to be paid: which though it ſeem to have been ſaid ſufficiently manifeſt; yet becauſe this aſſertion hath conſiderable adverſaries, and amongſt them *Cicero*, a man of ſingular judgement, and as rightly principled in all that concerneth the bond of an oath, (this one thing excepted) as was poſſible for a Gentile; it will not be wide of our purpoſe to confirm this aſſertion with ſome reaſons. *Firſt*, therefore he who ſweareth a lawfull and poſſible thing, is bound to perform it: but to pay money promiſed unto a Theef is neither unlawfull nor impoſſible: therefore he is bound. *Secondly*, he choſe that which then ſeemed unto him beſt, and which if one of the two were now neceſſarily to be taken by him he would chooſe again: wherefore

it

it ſeemeth that what was prudently choſen cannot honeſtly be refuſed. *Thirdly*, that which was promiſed to a certain end, ought by the party promiſing to be performed, when he hath obtained his end. Becauſe every contract upon condition, that condition being performed, ought alſo to be performed; which is the very baſis whereupon the obligation of conditionall vows is ſupported; But he who contracted for his ranſome with a Theef, did it to the end that he might redeem his life; therefore having redeemed his life, and enjoyed the end at which he aimed, he ought to perform that which he promiſed. *Fourthly*, the wiſdome of the fleſh ought ever to be ſuſpected, as an enemy unto the purity of the heart, and a trap unto the peace of the Conſcience; and what is the wiſdome of the fleſh if this be not, where profit ſeemeth to ſtrive with honeſty, nay honeſty being rejected, profit to be imbraced? That man will not much trouble his minde, whether money promiſed be to be paid, who eſteemeth Faith and Religion beyond riches; and quietneſſe of minde, beyond all worldly gain.

gain. *Fifthly*, *Regulus* and others, (as hath been ſaid) who kept their faith with enemies, though upon the hardeſt conditions, are celebrated by Heathen Writers: And *Cicero* himſelf commendeth *Pomponius* the Tribune, who performed that whereunto he ſware compelled through fear, adding this applauſe, So much in thoſe times was an oath eſteemed.

Sect. XVI.

But they who are of another opinion objećt: *Firſt*, that enemies are of a different nature from theeves, and pirats. For ſay they, we may deale with enemies as we doe with adverſaries, with theſe by the Civill Law; with thoſe by the Law of Nations; and therefore faith ought to be kept with them, but with theeves, enemies of mankinde; there is no ſociety of law, and therefore none of faith. I anſwer *firſt*, skilfull Lawyers affirm ſome legall rites of ſociety to appertain even unto theeves, of whom if we ſhould borrow money, it ought by the Law of Nations to be reſtored; wherefore a

pari,

pari, promiſes made unto them ought to be perſormed. *Secondly*, though no performance were due unto the theef, as a perſon unworthy thereof; for which reaſon, breach of bare promiſe might perhaps be more excuſable, yet ought we at leaſt to perform our faith unto God. *Secondly* they object, that through ſuch contracts honeſt men may be undone by rogues, which would be a publick miſchief. I anſwer, nay rather the lives of honeſt men ſaved from rogues, which will be a publick good. But, *Thirdly* ſay they, by this means robbery and rapine would be eſtabliſhed, whileſt theeves paſſe not only unpuniſhed, but rewarded. I anſwer, if it be ſo, it's ſo only by accident, through their vice, not his who doth not any way help the theeves, nor approve of their fact by promiſing, nor approveth of it by performing his promiſe, but rather in providing for his own ſafety, prevented ſo much of their wickedneſſe, that they remained theeves only, and not murderers. *Fourthly*, they object, that the obligation of an oath ariſeth from a deliberate act of the judgement and will, where the

will

will therefore is ſo far from freedome, that its action may rather be called coaction, there followeth no obligation. I anſwer, and it is confeſſed by all, that the wil cannot be forced. There may indeed be coaction, in reſpect of an externall and remote principle of action, but in reſpect of the neareſt principle, which in all humane action, is the will; there can be no coaction. He therefore who maketh an oath unto a theef, that he may ſave his life, doth it willingly with an unwilling minde, wherefore this kind of oath is not ſimply, but mixedly involuntary; that is to ſay, an action partly unwilling, becauſe it is not done willingly, partly voluntary, becauſe it is done with election, though not the freeſt, yet free enough to deſerve the name rather of voluntary, then involuntary, becauſe choyce of two things being granted unto the agent, it is in his power to take which he had rather: *And he willeth, who had rather.* He therefore is not truly ſaid to have ſworn unwillingly, who when he might have let it alone, choſe rather to ſwear. For death being threatned except he would ſwear, it was left to his choyce, whether he would

would rather ſuffer the miſchief threatned, or be redeemed from that miſchief, by the obligation of an oath. He conſidered, he choſe to be obliged, therefore he would be obliged; and he who confeſſeth that he would be obliged, argueth abſurdly that *he was conſtrained*; and therefore is not obliged. *Fifthly*, they object, that the Traveller oweth the theef nothing, and therefore is not bound to pay him any thing, ſeeing as hath been ſaid, all obligation relateth unto ſome debt: now that nothing is owing unto the theef is proved, becauſe no right can be founded upon injury, and it ſeemeth to be moſt unjuſt, that a man ſhould by his injurious fact acquire any right unto himſelf: therefore unto the theef, who terrified the traveller, and contrary to the duty of an honeſt man, extorted from him an unjuſt oath, no right accreweth; and ſo neither is the party ſworn obliged. I anſwer, a *twofold obligation* may ariſe from an oath: one unto the *perſon*, to whom the oath was made, as a party; the other to *God*, by whom the oath was made, as witneſſe, and revenger. Many things may hinder the

former obligation, ſo that he to whom the oath was made, may acquire no right nor any thing in conſcience be due unto him from the party ſworn: and from this kinde of obligation, and debt proceedeth the objection. But the obligation ceaſing in reſpect of the man, who offered injury and violence; yet the obligation made unto God remaineth; to whom *irreverence* is offered when a man admitteth of an oath which he intendeth not to fulfill; and *injury*, when having admitted of it, he regardeth it not.

Sect. XVII.

ONe *caſe* yet remaineth peculiar unto this place, and that is where a man falling amongſt theeves, to ſave his life, is conſtrained to promiſe them ſilence by an oath; that is, never to reveal their theft unto any man, or to diſcover their names unto the Magiſtrate. *It is very hard to determine any thing in this kinde*, ſaith *Frederick Baldwine*, late Profeſſor at *Wittenberg*; yet addeth, that *he thinks it ſafer that the perſon keep not the ſilence promiſed*; but diſcover the matter

ter unto the Magiſtrate, albeit he have ſworn to the contrary. It ſeemeth he is of opinion that the oath is not obligatory, but the three reaſons he giveth, as he propoſeth them, barely, and briefly without further confirmation give me no ſatisfaction. *Firſt*, he ſaith, that this oath is of an unlawfull thing. If ſo, there is an end, other arguments are needleſſe. But this he taketh without proof for granted: If it be thought unlawfull, becauſe it's the duty of a good Commonwealths man, to give notice of lewd perſons unto the Magiſtrate, that ſo they may receive condign puniſhment; it is granted, but it doth not therefore follow that it is alwayes ſin, not to give notice, ſeeing the affirmative precepts of duty oblige not ſimply unto the performance of the ſame, but when we are able, and it is required by the exigence of circumſtances. *Secondly*, he ſaith, that ſuch a kinde of oath *ſeemeth to have a certain kinde* of Colluſion with the theeves, which is pronounced ſo timerouſly as ſheweth he had not much faith in this argument, [*Kinde* of Colluſion, a *certain* kinde, and *ſeemeth* to have]. Which whether

it be true or not, who would undertake to prove, that it is not lawfull for a Traveller, if to the apparent hazard of his life, he fall amongſt theeves, to doe ſomething which might *ſeeme* to have a *certain kinde* of Colluſion with them? That which he bringeth in the third place, the impediment of Juſtice, encouragement of wicked perſons in their impiety, occaſion of leading others into the like hazard of their lives through ſuch ſilence, would be prevalent indeed, if the Traveller were gotten out of their hands ſafe and unſworn. But we ſuppoſe, except he had ſworn, he had been ſlain. I ask therefore whether in ſuch certain danger of life, was it lawfull for him to ſwear, or not lawfull? If not lawfull, (and certainly the two firſt arguments either prove that or nothing) he had periſhed; and who then ſhould have given the Magiſtrate information of the theeves? The inconveniencies which are objected from this ſilence, might they not (ſeeing dead men are enjoyned perpetuall ſilence) be objected from his death? But if it were lawfull to ſwear, then it is alſo lawfull to keep the oath,

ex-

except ſome emergent accident as it may fall out, unexpectedly do render the thing lawfull when it was ſworn afterwards unlawfull. Let this therefore, till the contrary be proved by ſtronger arguments, remain both in this caſe & the reſt, where deceit, fear, tyranny, and the like are exerciſed; That an honeſt man either ought not to ſwear at all, (which if the thing it ſelf be not unlawfull ſeemeth hard in imminent, and apparent danger) or ought religiouſly to obſerve his oath. And thus much for the Efficient cauſe of oathes. In which I was deſirous to have been briefer, if the matter would have born it; My diſcourſe hath encreaſed upon my meditations, beyond what I expected, and yet whileſt I ſtudy brevity, I have willingly omitted many things whereof I might profitably have ſpoken.

The fifth Lecture.

Of the Externall Form of an Oath; Containing ten Cases.

Summary.

1 *Oathes by ſignes onely without words.*
2 *Oathes by the Creature.*
3 *Oathes by Idols.*
4 *How to know whether a man have ſworn or no.*
5 *The firſt tryall, the form of the words.*
6 *The ſecond, the force of the words.*
7 *Of Joſephs form; by the life of* Pharaoh.
8 *Third triall, the cuſtome of the Countrey.*
9 *Fourth, the intention of the party ſwearing.*
10 *The uſe of the ſaid trialls.*
11 *The ſolemn rite of an oath.*
12 *Whether ſolemnity increaſe obligation.*
13 *Solemnity of oathes omitted.*

SECT.

Sect. I.

THe *Materiall* and *Efficient cauſes* of oathes have been handled in the foregoing Lectures; We come to ſpeak of the *Formall cauſe*. Now the *form* of a thing being either *externall* or *internall*, the caſes of this Claſſis are ſo under two heads to be divided, as may bring thoſe things which appertain unto the words, or ſignes of an oath, becauſe they are received by the interior ſenſes, under the name of *Externall form*; and thoſe things which appertain unto the ſenſe and interpretation of the ſame, which is the work of the minde, under that of *Internall form*. An oath in reſpect of externall form, conſiſteth of ſignes only, or of words only; or of both: wherefore the firſt doubt is of the oath which is made by ſignes only without words. There have been, who have thought, except the words *I ſwear*, or the Name of God be expreſſely uſed, as *I ſwear* I will perform it, *by God* I will doe it, *I call God to witneſſe*, *So God help me*, or the like, that it is but a bare promiſe, and no oath; and there-

fore obligatory under perill of falſehood only, not of perjury; ſo that he who fulfilleth not his promiſe, which ought alſo to be performed, is guilty of violated faith, but not of a violated oath. And amongſt the Caſuiſts, *Bartolus* is ſaid to have judged words, at the leaſt ſome, ſo neceſſary unto an oath, that unleſſe the teſtimony invoked were in expreſſe words pronounced, it could not formally be an oath, nor under that name obligatory. But theſe two opinions are worthily rejected by all. For ſeeing words are but interpreters of things conceived in the minde, whereof they are characters, if it be poſſible for thoſe things conceived, (though perhaps not ſo conveniently, yet ſufficiently) to be ſignified by other means, as writing, nods, ſignes, *&c.* to the underſtanding of others; no neceſſity enjoyneth the uſe of words. So mutes, they who have had their tongues cut out, and ſuch as lie ſpeechleſſe upon their death-beds, when they contract Marriage, make their Wills, or perform any thing which cannot be done without a clear and undoubted ſignification of their aſſent, which they are unable

unable to expreſſe by word of mouth, uſe by nods, by lifting up the hands or other ſignes, to ſignifie their anſwer unto the queſtion asked. Which ſignification is no leſſe valid unto all intents and purpoſes of the Law, then if it had been expreſſed by word. And it is the very ſame in an oath, to which ſo God be any way invoked witneſſe, whether expreſſely by word of mouth, or tacitely by any ſignes, whereby the perſons whom it concerneth, may manifeſtly perceive that the party deſireth as in the preſence of God to engage his faith, ſuch an act is both formally an oath, and fully ſufficient to oblige the conſcience, according to that verſe which *Stobæus* bringeth out of an old *Comedian*

The oath is firm, if I but give a nod.

He is therefore very much deceived, and his own impoſtor, who thinketh himſelf either free from, or more looſe in his obligation, becauſe he uttered no word that might expreſſe an oath. If to another *asking* him a *queſtion*, as in the preſence of God witneſſe and arbiter, by the manner of his behaviour he ſeem plainly to conſent; or if where

it

it may be advantagious unto him, (in reſpect of ſome wordly gain) that he ſhould ſeem to have ſworn unto the *words of another*, he knowingly, and wittingly make uſe of a friend, to witneſſe though falſely that he hath ſo ſworn, he hath bound by that fact his ſoul with a bond, and ought no leſſe to doe according unto all that which proceeded out of the mouth of the party asking or requiring; then if it had proceeded out of his own mouth: if the thing be lawfull, he muſt perform it; but if he know it to be unlawfull, he cannot by this trick evade perjury.

Sect. II.

FUrthermore as oathes may be ſworn by ſignes only, without words, ſo they may and moſt commonly are by words only, without ſignes; as appeareth by thoſe raſh ones, which ſlip out in common diſcourſe, and others. Now the words of an oath may be conſidered yet two wayes, either in reſpect of the things by which it is ſworn, or according to the manner of expreſſion, and form of ſpeech in which it

it is ſworn. Wherefore the *ſecond doubt* is concerning the *obligation* of an oath, in reſpect of that whether perſon or thing, by whom or which it is ſworn, where two caſes occur. The *firſt caſe* is, whether he who ſweareth by the creature be, and how far he is obliged? That oathes by the Creator are binding is moſt certain, and generally granted; but of oathes by the creature there is ſome doubt: Nevertheleſſe by way of anſwer, I ſay *firſt*, that to ſwear by a creature abſolutely, ultimately, and terminatively ſo as to conſtitute the end, and ſtrength of the oath in any creature without relation to God, is *ſimply unlawfull*: The reaſon is manifeſt, becauſe by that means the reverence due unto God only, is given unto the creature. For an oath, as hath been ſaid, is *Cultus Latriæ*, which ought not to be given to any creature, for as much as the party ſwearing, by invocation of God as witneſſe, and revenger, acknowledgeth him *ipſo facto*, ſearcher of hearts, to whom it is known whether the minde agree with the words, and the moſt juſt and powerfull puniſher of ſinners, whereof neither

ther is in the power of any created thing. Nay ſuch an oath were even by the confeſſion of Papiſts apparently idolatrous. *Secondly* I ſay, to ſwear by the creature relatively, and as it were tranſitively, as Papiſts uſe to doe by the bleſſed Virgin, or other Saints, or reliques of Saints, that is (as they expound it) not *ultimately* and *terminatively* to place the worſhip upon them, but *relatively*, and *tranſitively*, to paſſe it by, and through them upon God, is at the leaſt ſuperſtitious; becauſe it appeareth neither by light of reaſon, nor teſtimony of Scripture, that the power of ſearching hearts, or puniſhing perjury, is by God entruſted with, or delegated unto any of his creatures how holy ſoever. *Thirdly* I ſay, to mention any creature in ſwearing without mention of the Name of God, as if a man ſhould ſwear *by his head, y his ſoul, by his ſalvation, by this fire, by this bread*, &c. (though for the danger of ſcandall, and ſhew of evill, it were much better to abſtain from ſuch forms, yet) meerly for this reaſon, that we ought to ſwear by God only, is not unlawfull. Becauſe either in

theſe

theſe forms we ſwear not at all, or by God only. Which that it may be the better underſtood, leſt I ſhould ſeeme to bring ſome new, and ſuſpected doctrine into the Church, or to be indulgent unto that execrable cuſtome of ſwearing by the creature, which to the grief of good men is grown ſo common; It is to be noted, that in forms of this kinde, wherein mention is made of ſome creature, as it were by way of ſwearing, that the oath nevertheleſſe is in truth often ſworn interpretatively by God himſelf. As in all thoſe which after the common manner of utterance have in them a kinde of execratory ſenſe, *Upon my ſoul*, *Upon my ſalvation* I will doe this or that: where the ſenſe is, *Let not God bleſſe my ſoul*, *Let not God give me eternall Salvation*, if I doe it not. And in thoſe alſo wherein ſuch things are nominated as are apt to ſtir us up unto ſome remembrance of God; as when the *Jews* anciently ſware *By heaven*, *By this holy ſacrifice*, &c. meaning *By God whoſe Throne is in Heaven*, *By God unto whom this holy Sacrifice is offered*, &c. But where the names of ſuch things are uſed, which

which have not in their nature any ſpecially or obvious aptitude of raiſing us unto any thought of God, nor ſeem to imply any execratory ſenſe, as if a man ſhould ſwear at the table, or at the chimney, *By this bread, By this fire,* &c. though by the manner of the expreſſion, theſe forms may ſeem to be a particular kinde of oath, yet in truth, and interpretatively they are not oathes, but rather meer obteſtations, as anon in the third doubt ſhall be more fully explained. *Fourthly,* I ſay, every oath made by the creature, whether lawfully or unlawfully, that is, whether it be terminated in the creature (as the worſhip of Images is by the vulgar Papiſts) which is Idolatrous, or ſworn by the creature tranſitively, that thence mediately, and ultimately it may extend to God, (with which little trick the Popiſh Doctors endevour to defend their Image-worſhip) which nevertheleſſe is ſuperſtitious: if it be really and *formally* an *oath,* and not an *obteſtation* only, obligeth no leſſe the party ſwearing unto the performance of his promiſe, then if he had ſworn in expreſſe words by God himſelf. The reaſon is, becauſe in every oath

oath truly and formally ſuch, God is in ſome ſort invoked witneſſe. *Fifthly*, I ſay, though by that perhaps which I have now ſaid, this kinde of oath may in ſome ſort be defended, as not ſimply and generally unlawfull, at leaſt if it be underſtood, as I have expreſſed it: yet ſeeing it is certainly no leſſe obligatory then other oathes, and that no neceſſity enjoyneth the uſe of it; (becauſe where it is expedient to ſwear, we may uſe other forms, and where it is not expedient, we ought not to ſwear at all) It is the duty of that Chriſtian who would ſeriouſly provide for the peace of his own conſcience, wholly to abſtain from this kinde of form. Whereunto they will eaſily be perſwaded who ſhall throughly conſider the Originall, or iſſue of the ſame. It's Originall it oweth partly to the Idolatry of the *Chaldæans*, *Ægyptians*, and other ſuperſtitious Nations, who ſware by the *Sun*, the *Fire*, and other creatures which they eſteemed Gods; partly unto the reverence of the Divine Name and Majeſty amongſt the people of God, which happily in the beginning juſt and pious, in proceſſe of time degenerated by degrees

grees into ſuperſtition, the debauchery of oathes ſo heightned by evill cuſtom, that ordinarily they choſe rather to ſwear by obvious things, then as *Philo* ſaith, *to have recourſe unto the Creator, and Father of all things.* The ſame practiſe amongſt the Antient *Greeks*, (moſt of whoſe rites and manners may eaſily be tracked from emulation of the *Hebrews*) is obſerved by Interpreters of the *Greek* Poets, who write that *they were not ordinarily wont to ſwear by the Gods, but by ſuch things as were next at hand, or before the eyes*, as Bread, Fire, Water, Fowl, Serpents, and the like: But that which ſeemeth to have been begun in reverence of Divine power, is at length ſhrunk unto ſo great irreverence and contempt of the ſame, that through the craft of the Devill, and juſt judgement of God ſuffering ſin for the puniſhment of ſin; piety degenerated into ſuperſtition ſhot up again into open impiety. For when once they began to abſtain from the name of God, and ſwear by the Creature, licentiouſneſſe of oathes would admit of no bounds; nor ſtand in any awe of perjury; A Poet elegantly decides the perjury of a Prince.

Who

Who thought his Scepter not the Gods. He thought it lawfull having ſworn by his *Scepter*, to doe otherwiſe then he ought to have done, had he ſworn by the Gods. *Auguſtine* ſaith of the *Maniches*, *they ſware frequently by the creature, and without any ſcruple.* That amongſt the *Jews*, from the time this cuſtome of ſwearing by the creature waxed ſtrong, the reverence of oathes decayed very much, is moſt apparent by the words of our Saviour, *Mat.* 5. & 23. Which two places laid together afford a ſenſe, tending to the correction of a double, (perhaps a treble) errour. *Firſt*, that the *Jews* granted unto themſelves, ſo they abſtained from the Name of God, liberty of ſwearing in every trifle. *Secondly*, that they thought it no ſin to ſweare though by God, if that were true which they ſware. *Thirdly*, that whileſt they ſware but by the creature and not by God, they thought a falſehood no perjury: for ſo they perverſely interpreted that place, *Thou ſhalt not forſwear thy ſelf, but ſhalt render thy oathes unto the Lord.* Wherefore Chriſt teacheth that oathes taken not in the Name of God, but of creatures, are as truly

oathes, and as fully obligatory as thoſe wherein God is expreſly mentioned. And thus much ſhall ſuffice for the former caſe.

Sect. III.

THe *latter caſe* is of an oath made by Idols or falſe Gods. For ſolution of the doubt in this caſe, *Firſt* I ſay, that ſuch oathes are ſimply unlawful, apparently Idolatrous, and expreſſely prohibited by God; for they direct the true worſhip due unto the true God only, unto Gods which are not true; contrary unto the precept, *Deut.6.13. Thou ſhalt fear the Lord thy God, and ſerve him, and ſwear by his Name.* And God himſelf grievouſly upbraideth his people with this ſin, *Jer.5.7. How* (ſaith he) *ſhall I pardon thee for this? Thy children have forſaken me, and ſworn by them that are no Gods. Secondly* I ſay, that ſuch oaths oblige upon pain of perjury, and ought to be obſerved, and that he who hath violated his faith ſo given in a lawfull thing, is perjured; ſo ſaith *Auguſtine*, *Becauſe he hath ſworn by ſuch as he ought not, and done contrary to his oath, that which he*

he ought not to have done, he hath committed double ſin. And again, *he who ſweareth by a ſtone, if he ſwear a falſehood, is perjured.* You may perhaps object, that this wherein God is not invoked witneſſe, ſeeing a falſe God is no God, can be no oath, and therefore is not obligatory. I anſwer, though a falſe God be indeed no God, (becauſe as truth and *ens*, ſo falſehood and *non ens* are convertible) he is nevertheleſſe a God in the opinion of him who ſweareth; which is ſufficient to induce obligation. And therefore ſuch an one *ex Hypotheſi* is a true oath; to wit, the erroneous Conſcience of the party ſuppoſed; foraſmuch as he is bound in conſcience to perform the thing which according to the judgement of his conſcience he hath confirmed by an oath. Where faith ſworn by a falſe god is violated, injury is done unto the true God. Becauſe the party ſwearing, *Though under falſe markes, yet by a generall comprehenſion reflecteth upon Divine power.* Whence *Auguſtine, The ſtone doth not hear thee ſpeaking, but God puniſheth thee not performing:* alluding, as I conceive, unto the ſolemn rite of the *Romans*, where the

party ſwearing held a *flint* in his hand, and pronounced theſe words, *If I knowingly deceive, let* Jupiter *caſt me from all good men, as I this ſtone*; which ſaid, he threw the ſtone immediately from him; and they who had performed this ceremony, were ſaid *Jovem Lapidem jurare*. He therefore who forſweareth by a falſe god, ſhall finde the true God revenger of his perjury, and contempt of Divine Power, and Religion, ſaith the Author of the Book of *Wiſdome*. Nay *Auguſtine* is ſo confident, that he feareth not to affirm it *leſſe evill to ſwear by a falſe god truly, then by the true God falſely*. Which ſpeech of his may not be underſtood at large, and upon the whole matter, but ſtrictly as to the falſehood and perjury, which in that place are only conſidered. *Thirdly* I ſay, upon the obligatory power of this kinde of oath, dependeth the ſolution of that queſtion which was put by one *Publicola* unto bleſſed *Auguſtine*, handled at large by the Author, in his whole Epiſtle, 15. 4. *Whether it be lawfull to require an oath of one who we know will ſwear by Idols.* *Auguſtine* holdeth the affirmative, and proveth it firſt by example of *Abraham*, who

who confirmed the League contracted with *Abimelech* by oathes mutually given and received, *Gen.* 21. and of *Jacobs* Covenant made with *Laban*, *Gen.* 31. Then by reaſon, becauſe otherwiſe there would be no convenient means whereby Leagues might be made, and publick faith, and peace preſerved with Idolaters: nor doth the true God any where forbid the good uſe of faith, though wickedly ſworn by falſe gods. If it be ſaid, that this were to partake of anothers ſin: *Auguſtine* anſwereth, we do not by this means aſſociate our ſelves with him who ſweareth by falſe gods, Devils, in the evill of ſin, but in the good of his contract, whereby he engageth, and performeth his faith. And ſo much for the ſecond doubt.

Sect. IV.

THe *third doubt* followeth, which conſidereth the manner of expreſſion and verball form of an oath. The reaſon of the doubt is, that ſeeing every oath, truly, and formally ſuch, obligeth under guilt of perjury, but not ſuch forms as are not oathes: it

were needfull we ſhould be able, amongſt thoſe forms which ſeem to be oathes, by ſome note or character to know which are, and which are not properly, and formally oathes. In which matter I confeſſe, of ſo many of the Caſuiſts as in this ſtraightneſſe of time I could peruſe, I finde none ſatisfactory, ſome of them touching this queſtion lightly; others handling it indiſtinctly. To the end therefore I may propoſe ſomething concerning this point more diſtinctly, as my haſt to other things will permit; It is to be noted that unto a bare aſſertion or promiſe, ſome confirmation of faith is uſually added, and that by *Aſſeveration*, *Obteſtation*, or by an *Oath*: which three albeit they may ſeem little diſtant, and rather to differ in *degree*, then kinde; nevertheleſſe intrinſecally, formally, and ſpecifically they are each diſtinct from other. It is true, this diſtinction, through their affinity, the end at which they aim, and words whereby they are expreſſed, is oftentimes ſo obſcure, that it is very hard, either not altogether to confound them, or skilfully and dexterouſly to diſtinguiſh

guiſh them. Wherefore that every one of theſe may be the better diſcerned from other, four things, which may ſerve as tryals of every form of ſpeech, whether it be an Oath, an Obteſtation, or meer Aſſeveration, are to be conſidered, *viz.* The form of words, the proper and genuine ſenſe of the ſame, the cuſtome of the Countrey, and the intention of the party ſwearing.

Sect. V.

First, it may be ſometimes ſufficiently apparent, by the very *Form of the words*, whether a man have ſworn or not. *Swear unto me that you will give me an hundred. I ſwear*; or *By God* I will: or I promiſe *Before God* I will: or *As God help me* I will give you them. If any of theſe, or the like, be anſwered, it is an oath, whoſoever uſeth ſuch form, is *ipſo facto* obliged; and if he perform not the thing promiſed, guilty of perjury. But in this, now, *Will you give me an hundred? I will give* you them, the very words adding no further confirmation of faith, make but

a bare *Promiſe*. *You told me you would give me an hundred; will you give me them? Certainly I will: Believe me I will not deceive you.* Here ſome kinde of confirmation is added unto the promiſe, but it is plain by the very form, that this is but a meer *Aſſeveration*, neither an Oath, nor ſo much as an Obteſtation, ſeeing God is neither called to witneſſe, nor any other pawn of faith engaged. *How ſhall I know that you will give me that hundred which you promiſed? Here's my hand, By the faith of an honeſt man*, I will give you them; *As truly as the Sun ſhineth*, I will doe it; *Never believe me more*, if I dot not, *&c.* The words themſelves ſhew that they contain more then a bare aſſeveration, but they are not an oath yet. Theſe therefore are rather Obteſtations, wherein for further Confirmation of a matter promiſed, or aſſevered, we interpoſe ſomething which is dear unto us, or certain, and manifeſt unto all, as a pawn of our faith. Wherefore if it plainly appear by the meer form, that the thing aſſumed for confirmation of the promiſe be properly an *Oath*, a bare *Aſſeveration*, or an *Obteſtation*, there needeth no further examination.

SECT.

Sect. VI.

But becauſe it happeneth very often through the reſemblance of ſome ambiguous or large ſignification of a word, or ſome other cauſe, that it cannot certainly be judged by the words uttered, whether it be an oath or no; in the *ſecond* place, we muſt be attentive unto the *proper* and *genuine ſenſe* of thoſe *words*, and from thence make the Judgement. For it may appear by the forms, that all thoſe ſpeeches which appeal unto the Name of God; or wherein the *Greek* νὴ, the *Latine Per*, or the *Engliſh By*, are uſed, with the accuſative caſe, are formally oathes. Led by which reaſon only *Soto* conceived, ſo much difference between the terms, *By my faith*, and *In faith*; *By my troth*, and *In troth*, that he determined thoſe to be formally oathes, theſe none. But if the genuine ſenſe of the words be well looked into, there will be no difference between the Propoſitions, *By* and *In*, being applyed unto the ſame thing; for we are to judge of them, as the thing they are applyed unto is Sacred

cred or Civill. The form *By God*, is properly an oath, by vertue of the words: for the Name of God is a ſacred thing, and he who ſpeaketh after that manner calleth God to witneſſe. But that *By my faith*, (though by the cuſtom of ſome Countrey, or intention of him who ſpeaketh, it may be an oath) is no *oath* by vertue of the words, but a meer *Aſſeveration*, or at the moſt an *Obteſtation*. Becauſe humane faith is not a ſacred, but a civill thing; and he who ſpeaketh after that manner, calleth not God to witneſſe, but ſpeaketh as he believeth, or declareth, that the thing is uttered with ſerious and ſincere deliberation of minde. For the genuine Interpretation of the words, *By my faith*, whether in an aſſertory or promiſſory matter, is this, *I ſpeak from my heart; I tell you my very thought; I pawn my faith to you that the thing is ſo; If to my knowledge I deceive you, let me never be believed more*, &c. Wherefore the interpoſition of *faith*, maketh not an oath by vertue of the words, unleſſe perhaps it recall us to ſome oath which we have formerly made. As in this Univerſity, when a man is required to anſwer unto a queſtion,

queſtion, by vertue of his Oath, according to this form, *You ſhall ſpeak by your faith given unto this Univerſity.* And when Convocations are ſolemnly called, whereunto the *Doctors*, *Maſters Regent*, *and Non-Regent*, are warned by the Beadles to repair, *Per fidem, per fidem, per fidem.* The like in my opinion, (though others I know think otherwiſe) is to be ſaid of that of *Paul*, *By our rejoycing which I have in Chriſt I dye daily*; to wit, that it is properly no oath, but a ſerious aſſeveration only, that as he was ſubject unto death, ſo he was daily prepared for death, when it ſhould pleaſe God to call him. 1 Cor. 15. 23.

Sect. VII.

NOw it may perhaps by ſo much as hath been ſaid, be conveniently determined, what is to be thought of thoſe words, whereupon Interpreters variouſly diſpute, of *Joſeph* unto his Brethren. *By the life of* Pharaoh *ye are Spies.* Some are of opinion that *Joſeph* having been long converſant with *Pharaohs* Courtiers, as infected with a touch of their diſeaſe, began Gen. 41. 15.

to

to ſavour at the leaſt in this point of their manners and example, the *Ægyptians* being accuſtomed to ſwear *by the Kings life*; as the *Romans* in latter ages were *by the Genius of the Emperour*. But I cannot eaſily ſuffer my ſelf to judge otherwiſe of the words and actions of men famous for piety then neceſſity compelleth. I ſee divers of the Antients in contributing unto the fame of the Saints, too indulgent unto their own wits, whileſt they would cover apparent defects, with ſpecious excuſes. An error much more pardonable then theirs, who in this Age delighted with the contrary, love to be curious enquirers into the faults of devout men; and leſt matter ſhould be wanting unto calumny, by perverting blameleſſe actions, beſtow cracks upon Cryſtall glaſſes, as it were in the waſhing. Others allow a more favourable Interpretation unto the ſpeech of *Joſeph*, that he uſed for once only this form of ſwearing, familiar unto the Courtiers, as an accompliſhment of his diſguiſe, and that he might more skilfully repreſent the perſon of an *Ægyptian* Prince, which he counterfeited, leſt he ſhould

be

be discovered by his Brethren. But I doe not like to lay this burthen, though somewhat lighter, upon the shoulders of the most holy man without any necessity. The third opinion is theirs, who absolve *Joseph* from all guilt; but with this reason, that they think it was lawfull for any man before Christ forbad that kinde of oath, to swear by the creature. Which opinion I confesse so far, as it acquitteth *Joseph* of sin, I allow; but of the reason for it I cannot allow. For *first*, it appeareth not that Christ did more especially forbid oathes by creatures, then such as are made by God; for he generally prohibited the unnecessary ones of either kinde. A new prohibition of that which was alwayes unlawfull, would have been needlesse: And that which he spake of oathes by the creature in particular, tendeth to shew that this kind of oath once made contrary to what the *Jews* thought of it, is no lesse obligatory, then those which are made by the Name of God expressed. *Secondly*, neither is it true, that it was lawfull before Christ for pious men by any dispensation, or divine indulgence, to

swear

ſwear by the creature, ſeeing that worſhip is due unto God alone; as from *Deut.* 6. and *Jer.* 5. hath been proved; which latter place, though perhaps it peculiarly concerned them who ſwear by Idols, and falſe Gods: yet the ſtrength of the argument which the Prophet uſeth, generally taken, comprehendeth them alſo who ſwear *by creatures*; ſeeing that it may likewiſe be truly ſaid of creatures, that *they are not Gods*. *Thirdly*, the nature of an oath, as appeared by the definition thereof, ſheweth ſufficiently that it was never lawfull to ſwear by creatures: Heathens themſelves confeſſing that divine Invocation belongeth unto the eſſence of an oath. Which things being ſo, and this reaſon inſufficient to excuſe *Joſeph* of all crime: the *fourth* opinion followeth, which explaining the genuine ſenſe of *Joſephs* words, ſuppoſeth him not to have ſworn at all, and therefore not to have ſinned in ſwearing amiſſe: For if he ſware *by the life of Pharaoh*, either the life of *Pharaoh* was invoked as witneſſe, which were ridiculous to think; or contained ſome execratory, or imprecatory thing in it, which what

it

it could be without a very harſh and forced Interpretation of the words, is not eaſie to divine. But the ſenſe of his words will be very plain, and eaſie, if they be expounded by an *Indicative ſpeech*, thus; *By the life of* Pharaoh, *ye are ſpies*; that is, as true and certain as it is that *Pharaoh* liveth, ſo true and certain it is that ye are ſpies; like that, *By this Sun that ſhineth I tell you true*, which is as much as to ſay, this is ſo true whith I tell you, as it is true that the Sun ſhineth. Whereof neither in my opinion is formally an oath, but an aſſeveration rather confirmed by a vehement obteſtation. I am not ignorant that much may be ſaid for the contrary, which though it be not of weight to make me alter my judgement; nevertheleſſe it is of weight to make me think it fit that every man ſhould be left freely to his judgement, provided he condemn not anothers, and grant me this, That it cannot at leaſt *by vertue of the words*, except it appear by other means, be clearly proved that *Joſeph* ſware, ſeeing the words contain no Invocation of witneſſe, nor of vengeance.

SECT.

Sect. VIII.

THe *third* trial whereby an oath is to be known, is *the cuſtome of the Countrey*, place, or Community. For there may be ſome ſpeeches which neither by their *Form*, nor force and naturall ſenſe of the words appear to be oathes, yet through received uſe in ſome Nation and common eſtimation may be accounted *oathes*; as on the other ſide, ſuch as by the tenor of the words a man would take for oathes, may be eſteemed *no oathes*. The reaſon is, becauſe the value of words, is like that of money, not by *Nature*, but *agreement*, or rather *uſe*: that is, their worth is accordingly as they are eſteemed. To finde an example thereof, we neeed goe no further then ſome of our own forms: for whereas *Faith* and *Truth* (eſpecially as to this purpoſe) are words of the ſame ſignification and efficacy, in aſmuch as he who is void of truth, is void of faith, and he who is void of faith, is void of truth alſo. Nevertheleſſe our Countreymen through long uſe are poſſeſſed with an opinion, that he who ſays, *In faith*, ſweareth, and he who ſaith, *In truth*,

truth, ſweareth not; as alſo that *In Truth* is but a meer aſſeveration, and *By my troth*, an oath. Of which things it were a folly to demand other reaſon then cuſtome;

To whoſe Arbitriment belongs,
The right, the Law, the rule of tongues.

Whence it followes that he who whileſt he looketh only at the *form* or *force* of the words, taketh the liberty in common diſcourſe of ſuch kinde of ſpeeches, without diſcretion, or ſcruple, as have by long uſe obtained amongſt us the force and eſtimation of oathes, violateth the precept of Chriſt againſt ſwearing; ſcandalizeth his brother, and expoſeth himſelf unto the danger of perjury.

Sect. IX.

THe fourth and laſt triall whereby an oath may be known, is the minde, and *intention* of the party *ſwearing*. For be it ſo, that a form of ſpeech appear not by the words themſelves, nor by the common eſtimation of men to

be an oath: Nevertheleſſe if a man uſing ſuch a form, either through miſtake imagine himſelf to have ſworn, or through ſome deceitfull intention would be thought to have ſworn; that form, though it be not really, and in it ſelf an oath, will have nevertheleſſe as to that man, the full obligation of an oath to all effects; and if he violate his faith ſo given, he is guilty at the Bar of Conſcience, not onely of falſehood, but perjury: for as by the judgement of the Apoſtle, he who eſteemeth a thing *common* or *impure*, which in it ſelf is not impure, maketh it nevertheleſſe *impure* as to him; and is bound to abſtain from it as if it were really common, and impure. So by the rule of contraries, he who eſteemeth a thing *holy*, which in it ſelf is not holy, maketh it nevertheleſſe *holy* as to him, and is bound to abſtain from it as a thing really holy. And if errour in the underſtanding excuſe not from obligation, much leſſe may deceitfulneſſe in the will: Becauſe it is moſt juſt that an impious and fraudulent man, ſhould fall into the pit, which he digged for his neighbour, and that his

his feet ſhould be caught in the ſnare which he ſet for another.

Sect. X.

THe uſe of the four trials which I have explained, is this, that to know when a queſtion or ſcruple of Conſcience ariſeth concerning any form of ſpeech, which *ſeemeth to be an oath*, whether or no it be truly and formally an *oath*, and conſequently contain the *force of obligation?* Recourſe may preſently be had unto theſe trials, and the *examen* of the form made by them as Diagnoſtick ſigns, and that in the order which I have propoſed, beginning with the firſt, and running through the reſt, as there ſhall be occaſion; that is, except the *examen* appear ſufficiently made by the way, to ſhew it to be an oath. For that which is an oath, may appear to be but an *affirmation*, by the examination of ſome one mark; but it cannot be denyed to be an oath, till the whole *examen* be perfected through every mark. The ends of this *examen* are two, the one before the oath, that a man may bethink himſelf, whether

it be fit to uſe ſuch a form, or no? the other after the form uſed, that he may underſtand how far he is obliged.

Sect. XI.

OUr diſcourſe hath been hitherto of ſuch oathes, as are made by ſignes without words, or of ſuch as are made by words without ſigns; we come now to ſpeak of ſuch as are compounded of both. Now *ſigns* are joyned with *words*, for the greater either ſolemnity of the act, or dignity of the perſon. Wherefore a *fourth doubt* is concerning a ſolemn oath, where the *firſt caſe*, or firſt queſtion is, of the Rites and Ceremonies uſed in ſolemn oathes. Of the rites of the *Gentiles* many have written many things, which elſewhere to recite were not worth the while, much leſſe to our preſent purpoſe. *Alexander Neopolitanus* taketh notice of ſome of the chief of them; Thoſe were eſteemed moſt ſacred, where *touching the Altars of the Gods*, they ſware in conceived words; and thoſe next, in which they ſware *Jovem lapidem*. Now they are ſaid to ſware *in conceived words*, who either all

all repeat the formall words of an oath, or ſome one, the reſt ſignifying their conſent unto *his words*, by ſome word or ſign. Holy Scripture maketh mention of two rites eſpecially amongſt the antient *Hebrews*. Whereof one was peculiar unto ſuch oathes, as Superiours by their authority required of their inferiours for the faithfull performance of their commands. The firſt example of this kinde is *Gen.* 24. where *Abraham* requiring an oath of fidelity from his ſervant concerning the choyce of a wife for his ſon, commandeth the ſervant *to put his hand under his thigh*. The like *Jacob* upon his death bed commanded his ſon *Gen.* 47. when he committed his buryall in the land of *Canaan* unto *Joſephs* care. Which rite whether obſerved *in token of faith*, whereby they believed in the bleſſed ſeed, which was to come from the thigh of *Abraham*; or *in Commemoration of the Covenant* which was made with *Abraham* when he was circumciſed; or for any other cauſe, we finde not founded upon any expreſſe command of God, but to have been for ought we can gather of free Inſtitution. By which the perverſe and ſuperſtitious

ſeverity of thoſe men, who blame all rites in Divine Worſhip as execrable and abominable Idols in the Chriſtian Church, which for decency and order ſake are inſtituted by humane authority, without the expreſſe precept of God, is the more to be admired. The other rite amongſt the people of God was *elevation of the right hand towards Heaven*, during the act of ſwearing; and this was uſed in oathes voluntarily taken, and not by command of others. Which rite whether through imitation of the *Hebrews*, as in many other things; or by a kinde of naturall direction, looking towards the God, whom they believed to dwell in the moſt high place; the people of moſt Nations have obſerved. And of this as of the former, we have the firſt example in the ſtory of *Abraham*, *Gen.* 14. but no more founded for ought we know upon any ſpeciall command of God then the other. Nevertheleſſe the uſe thereof encreaſed ſo much upon poſterity, that by a Metonymie of the Adjunct, we finde the phraſe of *lifting up the hand*, frequently put for the act of ſwearing, yea and the word נשׂא which properly ſigni-

ſignifieth the *right hand*, is not ſeldome taken for an *oath* by the *Hebrews* and *Arabians*. Whence ſome of the Interpreters underſtand thoſe words, *Pſal.* 148.11. to be ſpoken of an oath; *Whoſe mouth ſpeaketh vanity, and their right hand is a right hand of iniquity*, or rather of *lying* and *falſehood*; for ſo properly the *Hebrew* words ימין שקר ſignifie. Yea even God himſelf, where he is repreſented ſwearing after the manner of men, uſeth that kinde of ſpeech, *I lift up my hand to heaven, and ſwear by my right hand, Deut.*32.40. To this rite are frequent alluſions in the Propheticall Books of either Teſtament. And here we have another occaſion of wonder, that this Ceremony ſhould not only be tolerated in Chriſtian Churches, but approved by thoſe very men, who are ſo far from approving the uſe of other rites of the Old Teſtament (though they be all alike lawfull or unlawfull amongſt Chriſtians) that they will not endure them, but cry out importunately to have them baniſhed from all devout Congregations. As concerning the rites of Chriſtians, that I may omit the reſt of the various Ceremonies

uſed in the primitive Church, and according to the differences of times and places variouſly obſerved: There is one which derived unto us from the Primitive times is yet in uſe, *viz.* to ſwear, in conceived words, *laying the hands upon the holy Goſpels of God.* And this kinde of oath, in which beſides the pronunciation of the words, ſome viſible externall geſture of the body is uſed; as touching the Altar, the Thigh, the Book, caſting away the Stone, lifting up the Hand, and the like, is uſually called a *Corporall oath.*

Sect. XII.

OF theſe rites which are uſed in ſolemn oathes, *the ſecond caſe*, or the ſecond queſtion is, Whether, and how far they ſtrengthen the obligation of an oath: that is, Whether a *ſolemn and corporall oath have any greater ſtrength of obligation* then a *ſimple* oath; whence the violation of the one might contract heavyer guilt, then that of the other. In anſwer, I ſay *firſt*, that it is granted, by Caſuiſts, not only of the *Romiſh* party, but alſo of the reformed Churches,

ches, that the ſolemnity of the act aggravateth the ſin of an oath, as well as of a vow, ſeeing oathes and vows are in moſt things alike, eſpecially in their obligatory vertue. *To ſwear corporally is more then by writing or bare ſpeech*, ſaith one of them; and another, *By how much the ſolemnities are encreaſed, by ſo much greater is the perjurie.* *Secondly* I ſay, although we yeeld the perjury to be more grievous, yet a ſolemn oath of it ſelf, and in its own nature, is not more obligatory then a ſimple one; becauſe the obligation of an oath, *as it is an oath*, (for it obligeth alſo as it includeth a promiſe, but I ſay as it is an oath) ariſeth preciſely from this, that God is invoked a witneſſe, and revenger no leſſe in a ſimple oath, then in the ſolemn, and corporall; for the Invocation is made preciſely by the pronunciation of the words, which is the ſame both in the ſimple and ſolemn, and not by any corporall motion, or concomitant ſign, in which the ſolemnity of the oath conſiſteth. Wherefore, *Thirdly* I ſay, that ſolemnity aggravateth the ſin of perjury is accidentall, but yet neceſſarily and inſeparably, not contingently

tingently; and that for two reaſons. *Firſt*, in reſpect of the *greater deliberation*. For to this end is the ſolemnity of external rites ordained, that it might ſtrike the minde with the greater reverence of the act, and as it were ſenſe of Religion, to the end the agent might be bent upon the act with the greater attention and deliberation: and every ſin *cæteris paribus* is the more grievous, by how much it is againſt the more deliberate and precedent act of the will. *Secondly*, the perjury of a ſolemn oath is the more grievous, becauſe it giveth the *greater ſcandal*. For with the more ſolemnity a thing is done, the more attentively it is obſerved by moſt; and therefore if there be offence in it, the example will be the more notorious and pernicious. *Fourthly* I ſay, ſeeing it is granted to be expedient in an oath, which is part of Gods Worſhip, that for the greater reverence of the Act, a certain *ſolemnity of rites* and Ceremonies ſhould be uſed, as alſo a *preſcribed form of words*; it ſeemeth that no juſt reaſon can be given, why both the moderate uſe of *ſolemnity*, and a *certain form of words* ſhould be baniſhed from the other

ther parts of publick Worſhip. I confeſſe though I have thought upon the thing with my ſelf, and enquired much of others, I could never yet finde out, why theſe ſhould not be taken from oathes, as ſuperſtitious additions, or be retained in the reſt of Gods ſervice, as profitable helps to piety. I leave it to him who can unriddle it: it is beyond my skill.

Sect. XIII.

THe *fifth doubt* remaineth, which is neither difficult, nor ſhall be tedious, and it is of an oath wherein ſome part of ſolemnity is omitted, in reſpect of the dignity of the perſon: As when an Oath is given unto a *Prince*, or ſome *great Officer*, at his Coronation, or time when he receiveth truſt and honour, the ordinary rites (as the *Touch* and *Kiſſe of the Book*, &c.) omitted; the words unto which he is to ſwear being read unto him, he is only admoniſhed upon the word of a Prince, or upon his Honour, *&c.* faithfully to obſerve the ſame. Unto which admonition, if he moving his hand unto his breſt, anſwereth only that he promiſeth, the

the oath is accounted taken: In this caſe I ſay briefly, that the party ſworn is no leſſe obliged in Conſcience, to the faithfull performance of the things promiſed, then if he had pronounced with his own mouth every word, and ſyllable, and had exactly accompliſhed thereſt of the Ceremonies, and Solemnities. And thus much ſhall ſuffice to be ſaid of the *externall form* of an oath. Perhaps ye expected, as I had determined, that thoſe things which appertain unto the *Internall form* of an oath, ſhould have been comprehended alſo in this Lecture. But that part containeth ſome doubts of great uſe, and moment, and worthy of larger room, eſpcially that part which explaineth in what ſenſe an oath ought to be underſtood. Wherefore leſt I ſhould injure you with too much prolixity, or the matter with two much brevity, I ſhall doe my endeavour that in the next Lecture, together with the *finall cauſe*, (which containeth not many doubts, nor much difficulty) I may finiſh that which I have to ſay of the *Internall form*.

The

The ſixth Lecture.

Of the Internall Form and finall cauſe of an Oath; Containing ſeventeen Caſes.

Summary.

1 *Of the Internall form or Interpretation of an Oath.*

2 *Where the parties are agreed upon the ſenſe of an oath.*

3,4 *Whether verball equivocation avail any thing.*

5,6 ——— *or mentall Reſervation?*

7 *That an oath is not to be eluded by a ſtudyed ſubterfuge.*

8 *In what ſenſe voluntary oathes are to be underſtood.*

9,10 ——— *And in what, oathes that are required.*

11 *How far the ſenſe of an oath dependeth upon*

upon the ſcope of the ſame.

12 *An oath upon condition.*

13 *Of the firſt and ſecond Intentions of an oath.*

14 *When a lawfull thing is ſworn for an evill end.*

15 *Whether the party ſwearing not intending to ſwear be obliged?*

16 *An Oath by the way of Complement.*

17 *When a man is doubtfull whether he have ſworn or no.*

18 *A man willing to ſwear, but intending not to oblige himſelf.*

Sect. I.

WE propoſed a twofold form of an oath, Externall and Internall: the *Externall* following the ſignes and words, which are objects of our Externall ſenſes we finiſhed in our laſt Lecture. We come to the *Internall*, which conſiſteth in the ſenſe and Interpretation of the words, and is the work of the minde. Now in this place I take

take the ſenſe of the words not *in reſpect of the Forms*, by which we underſtand a thing to be ſworn; for of this we have formerly ſpoken in the tryalls of oathes, (when we diſcourſed upon the outward form) but *in reſpect of the promiſe* confirmed by an oath, and contained in the words. A matter truly of great moment, and manifold uſe, and in either relation, worthy of your moſt diligent attention; for it is of much concernment, to know in what ſenſe you ſwear, becauſe he is forſworn, who performeth not what he promiſed, in the ſame ſenſe wherein he promiſed, or ought to have promiſed it: and that not in oathes onely, but in Vows, Promiſes, Leagues, Contracts, and all other conventions, wherein it behoveth an honeſt man that his dealing be fair, and his performance exactly agreeable with the true ſenſe of his undertakings. Wherefore to the point. The words of an oath, are either clear, or ambiguous.

SECT.

Sect. II.

THe *first doubt* is of the obligation of an oath, the *words* whereof are *plain*, and have a manifeſt unqueſtionable ſenſe: where four caſes occur. The *firſt* is, where the words of an oath or promiſe, are ſo clear either *firſt* by their proper and ordinary ſignification: or *ſecondly*, by the manner of ſpeech received, in any Countrey: or *thirdly*, by mutuall conſent of the parties, that their ſenſe is fully agreed upon, by the perſons intereſſed. For example of the *firſt*; I *Caius* promiſe unto thee *Titius*, to give thee poſſeſſion of my Land in *Tuſculan*, if within a months time thou pay me an hundred Crowns. Example of the *ſecond*; *John* bargains with *Peter* for the hundred Marks which I owe you, I will deliver you to morrow an *hundred* of my Wethers; Or, for the benefit of your Land, I will pay you the yearly rent of three *Buſhels* of Wheat. In the former of which examples, although an *hundred* be a word ſo ambiguous, that ſometimes it ſignifies *five ſcore*, ſome-

ſometimes *ſix ſcore*, yet by the received uſe of it throughout *England*, the intention of the parties would be ſo manifeſt, that there could ariſe no controverſie about the ſenſe thereof; becauſe we all know that an *hundred*, when we ſpeak of money ſignifieth *five ſcore*, and when of Cattel *ſix*. So a *Buſhel* in the latter example, is a meaſure, containing double the quantity in the Northern parts of this Kingdome, which it denoteth in the Southern. So whereſoever the bargain be made, the uſe of the place will ſo explain the ambiguity, that plain dealing men could by no means diſagree about the ſignification of the words. Example of the *third*, *Titius* deſiring to buy one piece of the land of *Gaius*, bordering upon his own having formerly beaten the price, at their next meeting, asketh, Will you ſell me your *land* at the price you ſet upon it? I will; though no peculiar mention be made of that piece which bordereth upon *Titius*; yet it is evident by the foregoing diſcourſe, that the ſame was peculiarly underſtood. And this kinde of oath, obligeth the party ſwearing to perform his promiſe fairly,

and in that ſenſe upon which without eluſion it is maniteſt the Contractors were agreed. And he who bargained to deliver an *hundred Wethers*, hath not made good his agreement till he deliver ſix ſcore.

Sect. III.

THe *ſecond Caſe* is of an oath, where the words according to their common ſignification are clear enough, but the party ſwearing having no will to oblige himſelf in that ſenſe intendeth another, whereof the words by reaſon of ſome ambiguity are not altogether incapable, and induſtriouſly conceal-eth his meaning in ſuch ſort, that the Auditors underſtand one thing, and he another. This is that *verball equivocation*, which amongſt ſome other Caſuiſts and Scholaſticks, the Jeſuites eſpecially maintain and practiſe; examples whereof are moſt frequently found in aſſertory oathes; becauſe by their Doctrine, the chief uſe of this equivocation is, when a man examined by an impotent Judge, or not legally, or having ſome other reaſon to diſ-

ſemble

ſemble the truth, fitteth the words unto his occaſion, by changing their genuine ſenſe into one more ſtrained and remote from the matter in queſtion. As if a Jeſuite apprehended, ſhould ſwear that he were a *Smith*, meaning that his name was *Smith*; or an Apprentice commanded to tell where his Maſter is, ſhould ſwear he *dyed* a moneth ago, meaning that he then *dyed ſtockings*. The like may happen in promiſſory oathes; as if a Generall having made a Truce with an Enemy for *ten dayes*, ſhould give him a Camiſado, becauſe in the Capitulation mention was made of the dayes onely, not of the night. *Livy* and others relate the ſtory of the ten *Romanes*, taken by *Hanniball*, and after they had ſworn upon certain conditions to return unto his Camp diſmiſſed, *one of which* (ſaith he, others ſay *two*) *moſt unlike a Roman* returned the ſame day, pretending ſomething forgotten, but intending to abſolve himſelf of his promiſe, and before night overtook his Companions: which deceiptfull trick of his was accounted ſo baſe, that he was not only ſcorned by the vulgar, branded with ig-

nominy by the censors, but adjudged by the Senate to be taken, and by a publick Guard delivered unto *Hannibal*. Nevertheleſſe Jeſuites ſo vigorouſly defend this equivocation, that *Jo. Molanus* Profeſſor at *Lovain*, juſtifieth the murder of *John Huſs* perpetrated againſt the publick faith engaged unto him for his ſafe Conduct, for this reaſon, that the Conduct undertook for his *ſafe coming*, not for the ſafety of his *return*. And now let Jeſuites confidently complain of the great injuries done them, whileſt we ſay they hold faith not to be kept with Hereticks; for if this be to keep faith, they need not much trouble themſelves, with whomſoever it be contracted, whether it ought to be kept or broken. But whole Bookes of this Jeſuitiſm are largely and ſolidly confuted by the Reverend Father in Chriſt, *John Morton* now Biſhop of *Dureſm*, *Henry Maſon*, and other of our Countrey-men, worthy the peruſall of ſuch as deſire further ſatisfaction in this point. In the mean time our reſult is, that the party ſwearing after this manner, both ſinneth in his equivocall oath, and is notwithſtanding

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ing that tacite equivocation bound in Conſcience unto the performance of his promiſe in that ſenſe, which the words yeeld of themſelves, and are without conſtraint apt to beget upon the mindes of others: unleſſe he act accordingly, he is not guiltleſſe of perjury.

Sect. IV.

SOme reaſons of this aſſertion I have already alleadged in the confirmation of our firſt Hypotheſis, I ſhall now adde but briefly a few more. The *firſt*, an oath according unto the ſum of that Hypotheſis, ought to be moſt ſimply, and effectually underſtood; unto which ſimplicity this artifice of induſtrious ambiguity is repugnant. The *ſecond*, it is a great profanation of the Name of God, to invoke him as witneſſe and ſearcher of hearts to atteſt the truth of words which agree not with the heart of the party ſwearing; for what were this if not as far as lyeth in mans power to make God, who can neither deceive, nor be deceived, an Impoſtor and Patron of baſe diſſimula-

tion. The *third* equivocation is contrary to the very inſtitution and nature of an oath, whoſe chief uſe is to be an *end of ſtrife and controverſie*, and to give as certain ſecurity in uncertain things, as humane nature is able to afford, it being *Expediendarum litium maximum remedium*. But that certainty which we ſeek in an oath, is loſt in equivocation; for what certainty can there be in his anſwer, whoſe meaning is uncertainty? nor are Controverſies thus ended but aggravated. The *fourth*, the party ſo ſwearing deludeth his neighbor, and knowingly deceiveth, contrary to the precept, *Ne juret in dolo*, and to the ancient form, *Si ſciens fallo*. The *fifth*, promiſe in the promiſſory is as affirmation and negation are in the aſſertory, and containeth an anſwer unto the queſtion, or intergatory propoſed by the Deferent, which unleſſe it quadrate and agree with the Intergatory propoſed, is no truth, but a lye. For out of the queſtion and the anſwer ſpringeth as it were one propoſition, which muſt be utterly falſe, where the anſwer is made in a different ſenſe, from that wherein the queſtion was asked. Nor

doth

doth that *qualification* to which the Patrons of this ſimulation fly afford them refuge. To wit, that we may not uſe this equivocation at our pleaſure, but onely before an incompetent Judge, ſuch as have no right to require an oath, or who compelleth us to ſwear without juſt cauſe, or exacteth that which is not due, or the like. But to omit that theſe are but their bare allegations only, not confirmed by authority of Scripture, of the antient Church, or indeed of good and ſolid reaſon, the force of theſe arguments by which we maintain the contrary, is neither overthrown, nor weakened by this qualification. And although it ſhould be granted, that an unjuſt force might null that obligation, made to man, becauſe it is not reaſonable that an unjuſt act ſhould acquire any right; yet no injury done unto us by men, can give us juſt cauſe to injure God, by caſting off that obligation which we made unto him the ſearcher of hearts, to whom ſuch right by every oath occurreth through the Invocation of his Name. To conclude, this Jeſuiticall Doctrine licenſeth the luſt of lying

and perjury unto impious men, notwithstanding that qualification, which though it remain, yet the sole judgement, when it is, and when not expedient to use it, is left unto the party swearing. Wherefore if a man against right and reason be constrained to swear, he ought either absolutely to refuse the oath, or to take it in that sense wherein it is given without simulation or equivocation.

Sect. V.

THe *third Case* allyed unto this is of *mentall Reservation*, which the Jesuites defend with the same reasons, and define with the same qualification, they doe verball equivocation: For as in that by wresting the words pronounced unto another sense, so in this by some addition not pronounced, but conceived in minde, the party swearing eludeth the Intergatory. So they say a *Priest*, if he be examined by an Heriticall Magistrate, whether he be a Priest, may answer that he is no Priest; meaning of *Bacchus* or *Apollo*. And *an adul-*

terous

terous wife if she be questioned of adultery by her jealous husband, may swear unto him that she committed not adultery, meaning not to the end to tell him. The like they hold in promissory oathes, that a Traveller to save his life may swear to give money unto a Theef, though he never intend it; provided that when he sware, I will give thee so much, he understood *if I owe it thee*, or *if thou demand it before the Magistrate*. But as this *mentall reservation* is built upon the same sand with *verball equivocation*, so is it destroyed with the same dash; for it rooteth all faith and assurance out of men, makes God an Impostor, is deceitfull unto our neighbour, perverteth the use and end of oathes, setteth open a great gate to all kinde of lies and perjuries, and is so much worse then *equivocation*, as more difficult to be prevented. For *equivocation* foreseen or suspected may be prevented, by such diligent explication of the words, as may leave no loophole of ambiguity. But no humane art or providence, if men will be jugling, can prevent this pouch of this *Reservation*. Where will you finde

a knot to tye this *Vertumnus* unto one ſhape?

Binde wicked Proteus *in chain*
A thouſand fold, 'tis all in vain.

Jeſuites and Prieſts reſerving unto themſelves the liberty to reſerve any thing, are not afraid with a ſerious brow, to take our *oath of Allegiance*, though penned with ſuch accurateneſſe of words, as leaveth no hold for cavill, nor way for eſcape; yet that very clauſe where in expreſſe words they promiſe that they will faithfully obſerve all the premiſes according unto the tenor of the words pronounced by them, *and according to the plain and naturall ſenſe, and true intent of thoſe words, without any equivocation or mentall reſervation*, they underſtand at the ſame time with this reſervation; to wit, *that I will tell you.*

Sect. VI.

THey lye nevertheleſſe at a ward to put by perjury; for ſay they, of the *verball* and *mentall* ſentence one entire

tire *sentence* is *compounded*, in which taken altogether there is no falsehood. For example, if a Priest swear in expresse words that *he is no Priest*, with the addition reserved in his minde, but not uttered, *that I should tell it you*; this whole sentence say they put together is true, *viz. I am not a Priest that I should tell it you.* Nor doth any reason seem to forbid a man the liberty, if he please, to compose his speech of verball and mentall terms. For why in our prayers, if one should pronounce those words only *our daily bread*, and expresse those other *give us this day* in his thought only, should the speech be intire and lawfull, and acceptable unto God; and unlawfull to doe the like in an oath? That this Jesuiticall Legerdemain may fully be discovered; *First*, it is admirable that these most acute Artificers should not perceive the Fabrick of this defence not to be raised, but upon the utter ruines of faith in all humane judgements, contracts, and promises. For the argument they use, if it were of any weight, would as well justifie the practise of this equivocation before a lawfull Judge, and in a just

juſt matter, (which they ſay ought not to be) as before an incompetent Judge, and in an unjuſt matter; ſeeing that a *ſentence compoſed of the verball and mentall parts*, is in each of the ſame truth or falſehood. And this anſwer may ſuffice *ad hominem*: but *ad rem*, I ſay *ſecondly*, that a ſentence compoſed, as hath been ſaid, of the verball and mentall parts, may be admitted when a man converſeth with his own thoughts, as in private *meditation*, or when he addreſſeth himſelf to God alone, as in *prayer* or *thanksgiving*. But when he hath to do with men, as in *oathes*, where he is to bear ſuch teſtimony as may be heard, and underſtood by others, a ſenſe mixed of verball and mentall parts, is in no wiſe to be admitted. The reaſon of this difference is manifeſt, becauſe that which he beareth hidden in his breſt, is no further known unto others then he declareth it by word of mouth. But to God before whom nothing is hidden, the darkeſt ſecrets of the heart are tranſparent. So that when men pray or meditate, it is all one, as to the point of truth or falſehood, whether they pronounce their whole thoughts, or

part

part of them, or none at all. But men who cannot dive into the heart further then words and actions discover it, must weigh the truth or falshood of a speech by those things only which may yeeld testimony unto the hearers. Which since those reservations which are kept within cannot effect, the truth of a speech is to be judged only by the *words pronounced*, and not by *mentall Reservation*.

Sect. VII.

THe *fourth Case* followeth the fact; for as before, and in the act of swearing, there ought to be a purpose of fulfilling the promise *in the same sense wherein it was proposed*, without any equivocation or mentall reservation: so ought there afterwards to be a desire and endeavour in due time faithfully to perform the same, *according unto that sense wherein it was sworn*, without any evasion or subterfuge; and as it is one kinde of perjury to strain the words during the act of swearing, unto another sense, then that wherein they are un-

underſtood by the Auditors, ſo is it another kinde of perjury having ſworn honeſtly, not to proceed ſincerely, but decline, and elude the ſtrength of the oath, (though the words be preſerved) with ſome new forged invention, *variouſly turning and dreſſing the words to cloke the guilt of their Conſciences*, as *Tacitus* ſaith of ſome. *Stobæus* telleth a pretty tale from *Herodotus* of one *Archetimus*, who had depoſited money in the hand of his friend *Cydias*; *Archetimus* upon a time deſirous to have the ſame reſtored, *Cydias* loath to part with the gold, diſclaimeth that he ever received it. The matter brought before the Judges, the Plaintiffe accuſeth, the Defendant denyeth, each with like confidence, neither by any witneſſe. The Judges other proofs being wanting decreed the determination of the controverſie by Oath; the day is appointed, *Cydias* in the mean time putteth the gold into an hollow ſtaffe which he had cunningly boared, and withall counterfeiteth ſickneſſe; then appearing at the time with his ſtaffe as newly recovered, delivereth the ſame unto *Archetimus* to hold, whileſt he approached the Altar,

and

and till he had performed the solemnity of his oath; This done with a most composed minde and countenance he sweareth that he had received gold from *Archetimus*, but had restored it again unto him. At which *Architemus* netled with his losse, and transported with indignation to see perfidiousnesse joyned with so much impudence, threw the staffe so hard against the pavement, that it brake, and discovered the money, the fraud of *Cydias*, and the whole truth of the matter: Which act the writer of the story cals *an imbroydered ly*; and observeth, that *Cydias* in reward of his perfidy came to a *miserable end*. Many such examples are extant both in Historians and common practise, out of which I shall collect some profitable observations. The *first* is, that even dishoneſt men are so far touched with some Conscience, and obligation of an oath; that though none at all or very small regard be had to justice and honesty; yet through an instinct of nature, they think themselves bound to quit themselves of their faith engaged, by performance of the same. The *second*, that unlesse corrupt affections be vigo-

vigorously withstood, that ſpark which is left in us of naturall light will goe neer to be altogether extinguiſhed by them, or ſo raked up in that heap, that we ſhall rather give our mindes artificially to palliate, then ſincerely to avoid perjury. *Thirdly*, that he who deſireth to keep himſelf free from all ſpot of perjury, muſt diligently ponder every word in its own ſtrength, and ſenſe of the oath which he is to take, that if it ought not to be kept, it may not be taken, or if it be fit to be taken, it may be fulfilled without deceit or ſimulation; for unadviſedly *to chop up holy things* is impious, and too late when they are once ſwallowed, *to chew them.* And ſo much for the firſt doubt, which amounteth unto this ſum, That the words of an oath where they are ſo clear in themſelves, that amongſt honeſt men there can be no queſtion of their meaning, the party ſwearing is obliged in that ſenſe which they apparently afford, and may not either in ſwearing, or when he hath ſworn, ſtretch thoſe words upon the Laſt of his intereſt, by any ſtudyed Interpretation.

SECT.

Sect. VIII.

THe *second doubt* is, where the sense of the words is in question, and the *Cases* are three. The *first* of *spontaneous oaths*, as in promises proceeding from the meer motion of good will, and a kinde of liberty of the minde, rather then duty of right or respect. The common and true answer is, that these promises are to be taken according to the intention of the party swearing, because every mans the best interpreter of himself. For example, if any of us should binde our selves by a vow, or promise, to give unto the poor of a Village, or Collector for them ten shillings a month; if the poor, seeing *month* as we use it is an ambiguous word, should by the promise pretend unto the first pension upon the 28. day of *January*, and so for the rest of the months upon the same day, taking a *month* for the space of four weeks, which is one signification of the word; and he on the other side should say that it was not due till the last of *January*, and so forth, taking *month* for the

twelfth part of a year, according to the diſtribution of the year in the Calender, which is another ſignification of the word, it were moſt juſt that the ambiguity ſhould be interpreted, rather in his ſenſe then theirs; becauſe that Penſion was not due in juſtice, and before the promiſe, but in charity, and by vertue of the free promiſe, without agreement or contract. And of this kinde of oath ought theſe words to be underſtood which are cited in the gloſſe upon the Canon Law, *It is manifeſt that God taketh not the oath as he unto whom it is ſworn, but as he who ſweareth underſtandeth the ſame.* But that this may rightly be apprehended, two things are obſervable: One, that it holdeth eſpecially in ſpontaneous oathes and promiſes, for in ſuch as are required the reaſon differeth, as ſhall be ſaid anon: The other, that the party ſwearing is in the preſent caſe obliged to hold unto his promiſe in that ſenſe which he either really intended when he ſware, or was willing the Auditors ſhould beleive. And not in any which he ſhall pleaſe afterwards to impoſe. For God who beholdeth

holdeth the heart, is not deluded by words. *Nor ought the intention to ſerve the words, but the words the intention.*

Sect. IX.

THe *ſecond caſe* is of oathes and promiſes, which are offered unto, or required of the party ſwearing, whether of right, or under pretence of right; ſuch eſpecially as Rulers of authority command their Subjects, or Laws ordain, as with us thoſe of *Supremacy* and *Allegiance*, thoſe which the Statutes of the Univerſity require of Graduates, and the like; Alſo thoſe which either party in lawfull Covenants demandeth of the other or are uſed in Bargains, Leagues and other mutuall Contracts, for the confirmation of mutuall faith. For anſwer in this caſe I ſay, that this kinde of oath ought regularly to be underſtood in that ſenſe which the party unto whom the oath is made ſeemeth probably to intend; ſo that the party ſwearing is bound under pain of perjury to fulfill his promiſe, (if it be lawfull and honeſt) according to the

intention of the deferent. *The words are understood according to the minde, and intention of him to whom the oath is made*, saith the Lawyer. The reason is, because this kinde of oath is taken to the end he to whom it is sworn, may by interposition of the same be assured, that the promise of the party swearing shall be performed unto him; but he would be no whit the more assured of that performance, if the words were to be interpreted at the will of the party swearing, and not according to his own sense; for there is a different nature of obligation, where debt is claimed by promise, and where promise is claimed by debt. God himself who is by Law no mans debtor, maketh himselfe through his free promises our debtor; and he who obligeth himself by a voluntary vow, oath, or promise unto any deed of Charity, *ipso facto* contracteth debt. But because this debt is not founded upon his right unto whom the promise is made, but floweth meerly from the free act of the party promising, it is most just that he should be his own Interpreter, who is most concerned to know how much, how far, and in what

sense

sense he intended to oblige himself. On the other side where the promise is founded upon some antecedent right, either that of subjection, and duty, by Superior Authority, or of Justice, and contract by agreement, between parties; Because he to whom the promise is made hath right to enquire the same, and is most concerned that it be faithfully performed, reason requireth that the obligation of the promise should rather be judged according to his mind, and interpretation, then by the sense of the party promising.

Sect. X.

The *third case* is, where the Deferent offering an oath of ambiguous sense, desireth only that the words be sworn, leaving it unto the judgement of the party swearing, to take them in what sense he pleaseth. I say it may very well be suspected that some deceit is couched in them, and that a pious prudent man ought therefore to refuse an oath proffered upon such conditions; which I shall make good by a

threefold proof. *First*, in regard of the oath it ſelf, in which the firſt thing required is truth; for a ſpeech of indefinite, and ambiguous ſenſe, before it be diſtinguiſhed, is no true propoſition, indeed no propoſition, ſeeing a propoſition as by the definition thereof is known even to children, ought *to ſignifie a truth or falſehood without ambiguity*. *Secondly*, in regard of him to whom it is ſworn. For the proper end of an oath is, that he to whom it is made may have ſome aſſurance of that which before was uncertain. But what certainty can be had in words of an uncertain ſenſe? *Thirdly*, in regard of the party ſwearing, who if he take the oath upon that condition, prepareth either ſcandall for his neighbour, or a ſnare for himſelf; for this kinde of covin cannot be imagined to have other driſt, then either that others might be drawn by our example, (though againſt their Conſcience) to take the ſame oath, which is to give ſcandall unto our neighbour; or that ſomething elſe by vertue of that oath might afterwards be required of us, which is either unlawfull, or inconvenient, and that were

to

to ſet a ſnare for our ſelves. Wherefore let a prudent man beware how he ſuffer himſelf thus to be impoſed upon, or eſteem the fear or favour of any at that rate, to ſwallow the bait, wherein he knoweth certainly, there is an hook. Aſſuredly that the act of ſwearing may be duely performed, it is expedient the ſenſe of the words be moſt clearly agreed upon, by all the intereſſed parties, which the Ancients call *Liquido jurare.*

---Scis tamen & liquido juratus dicere poſſes.

And it appeareth by an old form, the deferent when he offered an oath to the party about to ſwear was wont to ſay, *Qua de re peto liquido jures.*

Sect. XI.

But enough of theſe, I come to the *third doubt*, which is of the ſenſe of an oath according to the latitude or extent of the ſame, That is, whether the ſenſe of the words be, and how far it is to be meaſured by the ſcope. The *firſt caſe* is, where the cauſe of an oath

was particular, yet the words are generall. For example, *Papall usurpation* was the cause of the oath of *Royall Supremacy*, he arrogating unto himself the exercise of Supreme Jurisdiction *in spiritualibus*, throughout this Kingdome. I answer, such an oath is obligatory, according to the expresse words in the utmost latitude: The reason is, that the intention of a Law, though made upon particular occasion, is generall, to provide against all future inconveniencies of the like kinde, or nature. And therefore albeit in the preamble of a Law, particular mention be often made of that grievance, which gave occasion to enact the same, yet those words wherein the Law is contained, are for the most part generall; which is done industriously, and on purpose by Lawgivers, that other things of like nature may fall within their comprehension. Wherefore as Lawyers take their Responsall upon the sense of the Law, not from the *preamble*, but *body of the Statute*; so of the right interpretation of an oath, ought judgement to be made, not from the *preface*, but from *the body of an oath*.

SECT.

Sect. XII.

THe *ſecond Caſe* is, how far an oath is to be underſtood with ſome conditions. I anſwer briefly, *Firſt*, if the words contain an *expreſſe Condition* the party ſwearing is not bound, till the condition be performed. As if *Caius* promiſe *Titius* an hundred Crowns to morrow, if *Titius* give him this day poſſeſſion of ſuch or ſuch land; the poſſeſſion not given, *Caius* is not bound by his promiſe. *Secondly*, if there be no expreſſe Condition, yet all thoſe conditions and exceptions which are preſumed by Law and common cuſtome are to be underſtood, as I will do this or that, *If God permit, If it be not againſt the right of another, If things remain as now they ſtand, If I be able, If be it lawfull*, &c. as was ſaid more at large in the explanation of the ſecond Hypotheſis.

SECT.

Sect. XIII.

THe *third Case* is of the first and second Intention. For he seemeth to have fulfilled his oath, who doth according to that which he intended in the *second intention*, which is the end; although he perform it not according to the sound of the words, which contain the *first intention* only, or means. For example, if a man engage himself by vow, oath, or promise, to allow ten shillings a month to the poor of such a Parish, and in *January* and *February* give nothing, but in *March* send them thirty shillings. I answer, that if the party swearing intended to oblige himself unto *the substance of the thing* only, and not unto the circumstances and manner of it, he is not obliged *unto that way* which the words seem to insinuate. Whence in the example propounded, if he had paid a whole three moneths pension in the first moneth, doubtlesse he had performed his promise; yet it may be that by accident, and consequence he might become obliged, even unto the manner of the thing, because every

every man is obliged, *ceteris paribus*, and if there be no other impediment, in doubtfull matters to chooſe that which is ſafeſt: As in the example propoſed, it were ſafer to pay the penſion in the manner promiſed, that is, rather every month ten, then in the third thirty, both in reſpect of the danger of ſudden death, and uncertain events, and to avoid thoſe ſcruples which may ariſe even from neglected circumſtances. I ſhould therefore adviſe a pious man, that he be carefull to fulfill every of his vows, oaths, promiſes, according unto the tenor of the words, and of his intention, as far as conveniently he may, even to the ſlighteſt circumſtance; leſt through contempt of ſmall matters, he create ſcruples unto himſelf, or by degrees get ſuch an habit, as may cauſe him to contemn greater. But however unto one thing I exhort all, and it is the ſum and topſtone of this whole diſcourſe, concerning the ſenſe and interpretation of oathes, that above all they be watchfull, leſt they be too indulgent unto themſelves in this buſineſſe, or whileſt they pamper their own deſires, weaken the

the bond of an oath with over milde, and looſe interpretations, and ſo expoſe themſelves unto the danger of perjury. And thus much ſhall ſuffice to be ſpoken of the *Formall cauſe*.

Sect. XIV.

THere remaineth a little to be ſaid of the *Finall Cauſe*; The *firſt doubt* is, when a thing lawfull in it ſelf is promiſed with an ill intention, or to an ill end. *Firſt* I ſay it is ſimply unlawfull to promiſe any thing, though lawful, with an evill intention, or to an evill end: The reaſon is, becauſe as one defect in any humane action is enough to render the whole action evill, (for *good is the effect of an entire cauſe, evill of a partiall*) ſo eſpecially a defect derogating from the end, which holdeth the principall place in morall things; at which that ſpeech of our Saviour is thought to aim, *But if thine Eye be evill, thy whole body ſhall be full of darkneſſe*. *Secondly* I ſay, if any man ſhall have ſworn any thing unto another for a diſhoneſt end, yet without any diſhoneſt

honeſt conditions to be performed by the party, he is obliged to fulfill the promiſe. If a man promiſe a woman a Jewell, intending with himſelf to engage her by that token unto immodeſt love, nevertheleſſe without ſhew of any unchaſt condition, he is bound by the promiſe. The reaſon of each is, becauſe it is lawfull to give a Jewell, but to give it upon lewd conditions, unlawfull. *Thirdly* I ſay, that which is promiſed upon diſhoneſt *unlawfull* conditions, the conditions performed ought to be fulfilled, at leaſt if the thing be lawfull. If a man promiſe a ſum of money unto another, for adultery, falſe witneſſe, or any other wicked exploit, he is bound when the other hath performed the conditions, to ſtand to his promiſe and pay the money. So *Judah* rightly underſtood himſelf obliged to ſend the Kid unto *Thamar* his daughter in law, as the promiſed price of her Whoredome. The reaſon is, that although the bargain were, yet the thing promiſed in that bargain is not unlawfull. Wherefore it ought not to have been done, but being done it is valid. And by what

hath

hath been ſaid it is ſufficiently clear, that an unlawfull oath of a lawfull thing may be obligatory.

Sect. XV.

THe *ſecond doubt* reflecteth upon the Intention of the party ſwearing. That *Intention* I mean, not which aimeth objectively *at the matter of the oath*, or thing promiſed, whereby we enquire what the party ſwearing intended by this promiſe, in what ſenſe, and how he obliged himſelf: For of ſuch intention we have already ſpoken, when we diſcourſed upon the ſenſe and interpretation of an oath: but that *intention* is here underſtood, which aimeth objectively *at the act of ſwearing*; whereby we enquire whether he intended to ſwear, or to oblige himſelf, or not. Upon which Scholaſtique diſpute, very much, but more ſubtilly then profitably, I ſhall contract as much of them as is uſefull into a narrow room. The *firſt Caſe* is, when a man through evill cuſtome heedleſly aboundeth with unneceſſary oathes; I ſay *firſt*, that this kinde of ſwearing is moſt certainly a very

very grievous ſin; not only *Originally* and in reſpect of the Cauſe; becauſe it floweth from a depraved habit; but alſo *formally*, and in reſpect of the Act, for aſmuch as an act in it ſelf ſacred, is raſhly exerciſed, not in Judgement, and without reverence. *Secondly* I ſay, that ſuch oathes, if the act of ſwearing through the impetuoſity of the minde were altogether inconſiderate, are not obligatory. But if any deliberation of minde were preſent, though ſmall, they are in part obligatory. The reaſon of either member of this aſſertion is, becauſe deliberation of minde is required to make any humane act binding, and the meaſure of the obligation ariſeth from the meaſure of the deliberation.

Sect. XVI.

THe *ſecond Caſe* is, when in *Honour*, or *Complement* (for ſo Caſuiſts ſpeak) a man giddily ſweareth in a matter of ſmall moment. For example, if one contending with another, and preſſing him by way of reſpect unto

prece-

precedence should swear (as it often happeneth) not to stir out of the dore, sit at the Table, or touch the cup, till the other were first out, or set, or had begun. Nay since commonly the persons so striving both swear the same thing, if such oathes were obligatory, one of them must needs be foresworne, because of necessity one must doe that, which each sware he would not doe. *First* I say as before, that an oath of this kinde is rash, and not without sin, because without judgement. *Secondly*, that it is nevertheless in it self obligatory, except the act were altogether void of deliberation. But *thirdly*, that such obligation may either be stopped or taken away in such manner, as who doth otherwise then he hath sworn, may avoid Perjury. That is to say, the obligation may be *stopped*, if it be understood with a tacite condition, or exception; in this sense, If it please you, or if the thing be left unto me, I will not stir till you goe first. It may also be *taken away*, because seeing it proceeded from consideration of the place due unto the other, that other receding from his right, the obliga-

gation

tion ceaſeth, as (God willing) when I come to the ſolution of the bond ſhall more plainly appear.

Sect. XVII.

THe *third Caſe* is, whether a man doubtfull whether he have ſworn, or no, be bound by by his oath? Some think he is not bound: from the rule of the Law; *In doubtfull caſes poſſeſſion is the better title.* But ſeeing this rule is of force in things appertaining only unto commutative Juſtice; as if the Heir of *Caius* ſhould doubt whether the goods of the deceaſed bequeathed unto him by will were lawfully gotten; ſome, and more truly perhaps, think he is bound, unleſſe he can clear his doubt. The reaſon is, becauſe of doubtfull things the ſafer is to be choſen: and certainly it is more ſafe to think himſelf obliged, then not obliged; becauſe by that error he expoſeth himſelf at the moſt, but to temporall inconvenience, by this unto the danger of perjury.

Sect. XVIII.

THe *fourth caſe*, whether man willing to ſwear, yet intending not to oblige himſelf, be, nevertheleſſe obliged? Moſt of the Scholaſticks and Caſuiſts, they eſpecially who were before *Cajetan*, deny him to be obliged; and *Ovids Cydippe* defendeth herſelf from perjury at this ward,

It is the minde with which we ſweare,
And I had no ſuch meaning there.

But the opinion of *Cajetan*, and his followers is ſounder, who hold the party deliberately ſwearing to be bound, whether he intend to oblige himſelf or not. For the act of ſwearing is both in it ſelf obligatory, and proceeded from a deliberate minde. Therefore obligation, unleſſe it be otherwiſe impeded, muſt neceſſarily follow. Wherefore ſeeing that obligation floweth neceſſarily and naturally from an oath, it is not in the power of man to hinder or remove it; for the nature of things ſtated, no man can hinder their neceſſary effects.

effects. Were it not ridiculous, if he who hath ſigned, and ſealed a bond, ſhal plead that he had no intention thereby to oblige himſelf? Nay, would he not be obliged notwithſtanding that plea? He therefore who taketh an oath, is as much obliged by the act of ſwearing, whatſoever he intended, or profeſſe he intended. For he who intended the cauſe, is preſumed alſo to intend the neceſſary effect of that cauſe.

And thus, the goodneſſe of God directing, and your patience accompanying me, at length I have finiſhed this difficult and ſcattering diſpute *concerning the Bond of an Oath*: the other part of this Treatiſe, which concerneth *the Solution of the Bond*, I ſhall ſhortly (by Gods help) deliver in one Lecture.

The seventh Lecture.

Of the Solution of the Bond of an Oath; and of the use and abuse of Oathes; containing five Cases, and so many Conclusions.

Summary.

1 *What truth is required in a promissory oath.*
2 *What the solution of the Bond is.*
3 *Whether an oath may be dispensed with-all?*
4 *The Popes power of dispensing with oathes examined.*
5 *Whether an oath may be commuted.*
6 *The Superior may invalidate the oath of his Subject.*
7 *The matter of an oath ceasing, the obligation ceaseth.*
8 *An oath may be released by him unto whom it is made.*

9 *It*

9 *It is not unlawfull to ſwear.*
10 *The cuſtome of ſwearing in ordinary diſcourſe evill.*
11 *A man ought not to ſwear without neceſſity.*
12 *Cautions in oathes required by others.*
13 *An oath is not to be taken with an unſatisfied Conſcience.*

Sect. I.

THe *ſolution* of the *bond* or tye wherewith he who ſweareth bindeth his ſoul, and whereof we have hitherto ſo largely diſcourſed, is the task of this day, and concluſion of the work propoſed. Of which ſolution before we deſcend unto the particular kindes, two things are to be obſerved in generall. *Firſt*, that ſolution of the bond is proper unto a Promiſſory oath, and hath nothing to doe at all with the Aſſertory. In every oath whether aſſertory, or promiſſory, there ought to be *truth*; but with this difference, in

the assertory, a single truth, and for the present sufficeth, where in the promissory a double truth is required, one respecting the present, the other the future. *The present truth* regardeth the *act of swearing*, and consisteth in this, that the party swearing say true when he sweareth; that is, that his minde agree with his words, and that he be resolved to hold unto that which he promiseth. Which act of swearing in the promissory wholly agreeth as to the truth and falsehood with the act of swearing in the assertory. For the matter of that truth in either act, seeing it regardeth the *time present*, passeth as it were into a kinde of immutable necessity, in as much as an oath, so soon as it is made, may instantly be said to have been true or false; which truth or falsehood, when the act hath once passed, is as impossible to be altered, as it were to make a fact to have been no fact. That *obligation* therefore whereby the party swearing is bound for the present to say truth, falleth upon the *act it self of swearing*; and is inseparably conjoyned with that act, and for that reason *cannot be loosed*, nor separated from

from the oath: and of an aſſertory oath, except this for the preſent, there is no further obligation, becauſe the matter thereof is ſome fact paſt or preſent. But in a promiſſory oath, the matter whereof is a thing to be performed for the future, another *truth* is alſo required *for the future*, which regardeth the *matter of the oath*; and conſiſteth in this, that the party ſwearing make that which he hath promiſed to be true; that is, that he fulfill his promiſe. Now ſeeing the matter of a promiſſory oath, to wit, things to be performed for the future, are through the uncertainty of future events, obnoxious to manyfold changes and alterations: hence it cometh to paſſe, that the *obligation* which falleth upon that *matter*, and whereby the party ſwearing is bound in future to fulfill his promiſe, is mutable, and ſeparable from the oath. And this is that, which we call *Solution of the Bond*. From whence alſo followeth that which is to be *obſerved* in the *ſecond* place; to wit, that the ſolution of the Bond in a promiſſory oath, ought not to be underſtood in relation unto the former

obligation, which ariſeth *from truth for the preſent*, and is common with this, and the aſſertory oath; but ought to be underſtood only in relation unto the later obligation, which ariſeth *from truth for the future*; which is proper and peculiar unto this. That is to ſay, every perſon ſwearing promiſſorily, *ipſo facto*, and by vertue of the act of ſwearing is ſimply, and indiſſolubly *obliged in preſent*, to intend faithfully and from his heart to effect that afterwards which he promiſeth; but having ſworn, it may come many wayes to paſſe, that he may *not be bound for the future*, to fulfill that afterwards which he formerly promiſed and intended. In a word thus, He is alwayes forſworn, who *intendeth not* that which he promiſeth; but he is not alwayes forſworne, who *performeth not* that which he promiſed.

Sect. II.

NOw that a thing promiſed may nevertheleſſe lawfully, and without danger of perjury or other ſin, not be performed, muſt neceſſarily happen one

one of theſe two wayes, either that there was no obligation from the beginning, or that it was (by *ſolution of the bond*) ſince taken away. If the thing promiſed were, when it was ſworn, either *impoſſible*, or *unlawfull*, the oath taken unto the ſame impoſeth no obligation, nor needeth ſolution, but *penitence*; for as much as in ſo ſwearing grievous ſin is contracted, but no bond; for we have already ſhewn, that impoſſible things, and unlawfull things are in no wiſe obligatory. Wherefore *ſolution* of the *bond* ſuppoſeth antecedent obligation, and implyeth that the ſame may be afterwards ſo taken away, or at the leaſt obſtructed, that he who was formerly bound up ſo cloſe with the bond of his oath, that he might not under pain of perjury doe otherwiſe then he had promiſed, is now no farther bound unto the performance of his promiſe. The buſineſſe therefore now in hand is to find out a certain reaſon, whereupon he who hath obliged himſelf by the bond of an oath unto the performance of a thing, may reſt ſecure in his Conſcience that he is delivered from that bond; and no farther

bound

bound unto the performance of that promiſe. To which ſolution thoſe five wayes commonly aſſigned, we ſhall examine in their order.

Sect. III.

THe *firſt Caſe* is of the diſpenſability of an oath; Whether and in what the diſpenſation of a Superiour, may take away the obligation thereof. *Diſpenſation*, as the word is commonly taken, ſignifieth exemption of a perſon from the ordinary courſe of Law granted, by ſpeciall favour of him who is in authority. As if a man who is ſubject to any Law, ſhould by eſpeciall grace of his Prince be exempted from obedience unto that Law, as we ſee daily practiſed in Univerſities, where upon reaſonable grounds diſpenſations are uſually granted unto particular perſons, whereby they are in ſome things freed from the obſervation of the Statutes. Now the *right of diſpenſation* is founded upon that *equity*, which requireth that ſometimes the rigour of Law be in ſome things remitted,

remitted, to the end that equity may not be excluded. For ſeeing Laws were of neceſſity made in generall tearms, and have regard unto that which is *commonly* and *for the moſt part* good and profitable for the publick, which nevertheleſſe *pro hic & nunc*, may happen to be unprofitable, or at the leaſt leſſe convenient; it therefore ſeemed good, where that which is eſtabliſhed by Law appeareth to be exceeding burthenſome, or inconvenient to ſome private perſon, and the publick to receive no great detriment by the omiſſion thereof, that the Prince, or other legitimate Superiour, ſhould have power to determine, that the Law in ſuch caſes is not to be obſerved. And this is that which in Law we call Diſpenſation. Now what power is in *ſecular Princes* to diſpenſe with their Laws, the ſame doe the *Popes of Rome* arrogate to themſelves in diſpenſing with Vows and Oathes. Whoſe impudence in this kinde, whileſt they abſolve ſubjects of their Allegiance to Kings, null Leagues and Contracts made by Princes, untye the ſtraighteſt knots of vows and oathes by commutation, relaxation, diſpenſation,

tion, contrary command, or other artifices at their pleaſure, and for their profit, I could wiſh ſome who moſt juſtly condemn, did not moſt wickedly imitate. But though others *de facto* exerciſe this power of diſpenſing with oathes, yet the Pope only challengeth it unto himſelf *de jure*. Many even before *Luther* have grievouſly complained of this thing, and ſharpely inveighed againſt the abuſe of Papall Diſpenſations; unto whoſe writings I referre the ſtudious, and betake my ſelf by ſome arguments to prove the bond of an oath ſimply indiſpenſable, ſo that no power at all of diſpenſing with it, is either in Pope or any other. *Firſt*, becauſe the obligation of an oath is of Divine naturall Law. But Naturall Law is not ſubject to Humane Power, ſeeing God alone is the Author and Lord of Nature: nor could it ever yet be ſhewn, that God hath granted unto any kinde or order of men, authority to diſpenſe with *the Law of Nature*. *Secondly*, becauſe this power of diſpenſation being granted, the chief end of an oath, which is ſecurity (as I may call it) for the thing promiſed, would utterly

terly be overthrown: for he unto whom the oath is made can have no aſſurance, if the promiſe of the party ſwearing may be diſpenſed with, that it ſhould ever be fulfilled. *Thirdly*, becauſe an oath in that very act and inſtant, whereby it impoſeth the *obligation* of ſwearing, and the promiſe of performance, acquireth *right* of the thing promiſed unto the party to whom the oath is made; which two effects of an oath are ſo combined, that the one granted or denyed, the other alſo at the ſame time muſt neceſſarily be granted or denyed. Wherefore ſuppoſe the *obligation* of the party ſwearing taken away by diſpenſation, and it followeth that the *right* of him to whom the oath was made, is alſo taken away by the ſame; aud farther, that ſuch Diſpenſation muſt be either *needleſſe*, or *unreaſonable*: needleſſe and ſuperfluous, if it be done with his conſent, to whom the oath was made; if againſt it, unreaſonable and unjuſt. For he being willing, the obligation (as I ſhall ſhew) may be remitted, even without diſpenſation; but to take away his right againſt his will, is injury. *Fourthly*, becauſe in a promiſſory

missory oath, obligation is not only made unto our neighbour, as it is *promissory*, but to God also as it is an *oath*. Wherefore granting, which is not to be granted, that Superiours have power to take away the obligation, whereby in regard of promise man is obliged to man; yet would it be unsupportable presumption, that dust and ashes should arrogate unto it self authority to take away the obligation, whereby man is obliged unto God as witnesse and revenger. *Fifthly*, because humane dispensation is a matter of *externall Judicature*. But the obligation of an oath, is in the conscience within, which is subject unto no Judge but God; and belongeth not unto the Empire of man. Wherefore he who claimeth the right of dispensing with oathes, be he what he will, assumeth unto himself divine Power, seateth himself upon the bench of *internall Judicature*, and exerciseth Dominion over the Conscience. And such dispensation is *de jure* null, and invalid; even as that sentence is invalid unto all intents and purposes of the Law, which is given by a Judge in a Court where he hath nothing

thing to doe, becauſe there he is no Judge.

Sect. IV.

HEre the Patrons of Diſpenſation are wonderfully perplexed, how to ward the blow of the firſt argument, which is all they uſe to object unto themſelves. It coſts them much ſweat to rowl this ſtone, (for they ſee it is the part of the Popes Authority, which left his Kitching languiſh, muſt in any caſe be maintained) and they may put the gain in their eye; ſeeing they cannot finde wherewithall to make a ſolid defence, nor could ever yet agree amongſt themſelves, by what right the Pope arrogateth unto himſelfe this power of diſpenſation. Which one thing were enough to argue them conſcious of their weak pretences. For as in waging war, ſo in exerciſing power, the cauſe which is not ſtedily aſſerted, may well be preſumed unjuſt. Some deduce this power of diſpenſing with vows, and oathes, from the abſolute and Oecumenicall Authority, whereby

whereby the Pope is *Lord of the Earth*, and *Emperour of the whole World.* For seeing every person vowing or swearing is the Popes subject, this condition say they is understood in every vow or oath, to wit, *If it please our Lord the Pope.* Whereupon it followeth, that when the Pope signifieth, which he doth by way of dispensation, that he is not pleased the thing sworn should be ratified, the obligation presently ceaseth. Which opinion granted, the Pope at his pleasure may rescinde any oath, either with just cause or without it. Wherefore this rejected as too grosse, others, and among them some modern Jesuites deny, that the Pope can dispense with oathes, or dissolve Royall Contracts, or that he ever did it *properly*; that is, by taking away the obligation, or the obligation remaining by exempting any private person from the same: But they say that he dispenseth only *improperly*; that is, by declaring the oath in that case not obligatory, by reason of the hinderance of some good, or consequence of some ill, if the oath should be kept. But on the contrary, besides the evidence

of

of his practice, which sheweth that the Pope exerciseth in this matter more then declaratory power, or (which cometh to as much) under pretence of declaratory power, can determine of Leagues, Vows, Oathes, Contracts between Kings, or any other at his discretion, being in this case Supreme and sole Judge, whose sentence must be obeyed, without appeal. It is worthy consideration, *First*, that either the *Cause* is manifestly *just*, why a thing promised by oath ought not to be performed, as if it be impossible, dishonest, or any way unlawfull; and then the party swearing may of his own authority, nay ought without waiting for dispensation from the Pope or any other, to retract the thing sworn: for where there is no obligation, the Conscience is free, and needeth no dispensation. Or *secondly*, that *no* just *cause* appeareth why the oath should not be kept: and then it must be kept; and he who either asketh, or granteth Dispensation, sinneth; Because the obligation which neither can nor may be removed by humane power, remaineth. Or lastly, that *the thing* is *doubtfull*, and appeareth not by reason

of difficulties on both ſides, whether the party ſwearing be bound to the performance of his promiſe: and then it will be profitable to conſult with pious, and prudent men, skilfull in divine Law, and to reſolve with their advice what is moſt expedient. In which matter ſeeing knowledge is more requiſite then power, I underſtand not why the Pope ſhould be fitter then another man, unleſſe it were certain the Pope excelled other men in prudence, and piety; for that which is not credible, certainly is not neceſſary. *Thirdly*, others not ſatisfied with this declaratory Diſpenſation, as detracting too much from the Popes authority, have beaten out an anſwer of wonderfull ſubtilty, that the obligation of an oath, which is of divine Naturall Law, may really be taken away by Diſpenſation of the Superiour: but that it muſt not therefore be ſaid, that the Superior diſpenſeth with Divine and Natural Law; becauſe ſay they, that Divine Law of Nature is, that an oath ſo long as the ſtrength and obligation thereof remaineth, ſhould be kept; and with this Law the Superiour diſpenſeth not, but by his

his Dispensation taketh away that strength of the oath, whereby it obliged the party swearing before the Dispensation. But this subtilty opened unto the quick would be found a meer trifle which availeth nothing, or implyes a contradiction; and is refuted by the *Jesuite Achorius*, though *Sayrus* the *Monk* be about his ears for it. So whilest these *Cadmean* brethren dispatch each other by mutuall blowes, nor can finde any reason whereby to arm themselves in proof; they really confesse that the cause which they have undertaken, cannot be defended. Wherefore I conclude that neither Pope, nor Prince, nor Synod, nor Senate, nor Ecclesiasticall nor Secular Superiour, hath any right to dispense with Leagues, Contracts, Oathes, or to absolve any man from that Bond wherein before the Dispensation granted he was engaged.

Sect. V.

With this first of Dispensation, the next question, or the *second Case of Commutation of an Oath* is allyed. Now *Commutation* (as the word expresseth) is nothing else but translation of the obligation from one matter to another, which whether greater, lesse, or equivalent, seemeth in some respect to be more convenient. And *Commutation* differeth from *Dispensation*, as a *speeies* from the *genus*, or *part* from the *whole*. For if a Bond could be looſed either by the one or other, it would be *wholly* unbound by Dispensation, by Commutation *in part* onely. The doctrine of Casuists concerning Commutation, amounteth to this sum: *First*, that a private man of his own authority, without his Superiours Dispensation, may commute a vow, or oath, into that which is *evidently better*; which they confirm by Gods example, who doth not always fulfill his temporall promises to the letter, but often changeth them for the better;

better; and for confirmation of this opinion, they bring the ſpeech of *Gregory*, He infringeth not his promiſe or purpoſe, who changeth it for the better. *Secondly*, that promiſe cannot be commuted to that which is *evidently worſe*, or whereof queſtion may be made, whether it be better, without authority of a Superiour qualified with legitimate power of judging and determining in that point. *Thirdly*, that by Commutation preexiſtent obligation is wholly taken off from the former matter, and new obligation brought in and laid upon a different matter. But this whole doctrine is built upon a falſe foundation, to wit, *diſpenſability* of an oath; which being (as we have proved) null, this ſuperſtructure of *Commutation* muſt neceſſarily fall to ruine. Wherefore briefly I ſay, that the bond of an oath cannot be remitted or loſed, either in whole by Diſpenſation, or in part by Commutation, without conſent of all the parties; But the conſent of him unto whom the oath is made, is more eſpecially required, becauſe ſuch right is acquired unto him, as without his own conſent ought not to be taken

away. For the example of God it ſuiteth not, becauſe *his promiſes* as they are all of free bounty, ſo the temporall ones are alſo conditionall, and to be underſtood with exception of the Croſſe, of the good pleaſure of God, and of that which he knoweth to be moſt profitable for us. Neither is the caſe of a *Vow*, and of an *Oath* altogether alike in reſpect of Commutation; for in a vow ſeeing it is made to God alone, ſome liberty may perhaps be granted unto the perſon vowing of changing the ſame into another which may be evidently better, and more acceptable unto God, there being nothing in this alteration injurious unto a third perſon: but in an *oath* which is made unto man, *injury* might be done him, if it ſhould without his conſent, and againſt his will be commuted into any other thing. As if *Caius* ſworn to pay ten pound unto *Titius*, ſhould give him an Horſe worth ten pounds, it would not ſatisfie his oath, for it is not reaſonable that a man ſhould be forced to commute a thing due unto him. Wherefore the bond of an oath cannot be looſed, nor the obligation taken

taken away by either of theſe inventions.

Sect. VI.

BUt it ſeemeth it may by the three wayes remaining; to wit, *Irritation* of the Superiour, *Ceſſation* of the matter, and *Relaxation* of the party. Wherefore the *third Caſe* is, of ſolution of the bond by irritation declared by the Superiour. Now *Irritation*, (for ſo with the Caſuiſts, we muſt ſpeak, though barbaroufly) ſignifieth an act of the legitimate ſuperiour, whereby of his Authority he rendereth an oath made by his Subject without his conſent null and void. For that legitimate Superiours may reſcinde Vows, and Oathes, of ſuch as are not free, but under their Authority, *Moſes* teacheth (as when we were upon the efficient cauſe we obſerved) largely throughout this chapter. The reaſon is, that he who is in the power of another, is not in his own, nor can oblige himſelf in things wherein he is ſubject, without leave from his Superiour; and there-

fore he ought not by any act of his to bring obligation upon himself without the others consent, either expressed, or upon reasonable grounds presumed. For *the rights of Rulers* over their Subjects are by the immoveable and eternall Law of God perpetuall. Moreover the *duty of Subjects* together with the right of obedience and subjection, are by the same perpetuall Law, perpetually and indispensably obligatory. Which antecedent obligation (by our third Hypothesis) obstructeth the effect of a subsequent oath, in such manner as it cannot be binding: for *the former obligation ever prejudgeth the latter*, and rendreth every act introductive of new, and contrary obligation, invalid. Wherefore in this case I say *first*, that a Subject ought not by oath to promise any of those things wherein he is subject unto another, without the consent of his Superiour at the least presumed. *Secondly*, that if he have sworn, and the thing be lawfull, he is so long obliged unto performance, as it appeareth not to be against the will, dignity and profit of his Superiour. *Thirdly*, that the Superiour if he

he have by expreſſe conſent, whether before or after, once ratified the promiſe of his ſubject, cannot make the ſame afterwards void, or null the obligation thereof. *Fourthly*, if the Superiour ſo ſoon as he cometh to know of the matter, openly and peremptorily, declaring his diſſent, forbid the performance of the ſame, that the tranſitory obligation preſently ceaſeth, and the ſubject by vertue of his former obligation of duty, which is permanent, and perpetuall, is bound notwithſtanding his oath to obey his Superiour. Whence if any man ſubject unto the power of another, whether Maſter, Father, or Prince, voluntarily compelled by force or fear, or miſled through fraud, or example of others, happen to make any oath, whereunto he believeth his Maſter, Father, or Prince, had he bin preſent, would not have condeſcended; the ſame hath ſinned againſt his duty in ſwearing, and is bound in no wiſe to fulfill that oath. Reſolved therefore upon this queſtion, that irritation of a legitimate Superiour may cancell the Bond of an Oath.

SECT.

Sect. VII.

THe *fourth Caſe* is of the ſolution of the Bond, *by ceſſation of the matter*, or ſome conſiderable alteration happening unto the principall cauſe of an oath: And it is then to be ſuppoſed that the matter ceaſeth, when between the time of the oath ſworn, and that wherein it is to be performed, the ſtate of things is ſo changed, that if the party could have foreſeen what would have followed, he would by no means have ſworn. I anſwer briefly, that the matter of the Vow, Oath, or Promiſe ceaſing, the *obligation* thereof muſt alſo *ceaſe*: as in naturall and artificiall things, where matter is defective, the action of the agent muſt be likewiſe of neceſſity deficient. For neither can fire burn except it have combuſtible matter, nor a Carpenter make a fourm without wood. Wherefore if a Souldier ſwear obedience unto his General, the War ended, and the Generall reformed, he is not bound by his oath to yeeld him obedience. And if a

Father

Father ſwear never to alter the Will whereby he made his ſon his Heir, yet finding his Heir afterwards practiſing upon his life by poyſon, the Father is no farther bound by his oath, but notwithſtanding the ſame may alter his will, and adopt another Heir. The ſame may be ſaid where a man having heard the Statutes of any College or Society read unto him, ſweareth to obſerve them; if theſe Statutes happen afterward to be revoked or abrogated, the party ſwearing is abſolved from the bond of his oath. The reaſon is, that the root of obligation being pulled up, the branch muſt needs wither. Now the *matter* which gave occaſion unto the oath, was the root of that obligation which ſprang from the oath. For an Oath *followeth the nature and condition of the Act wherewith it is joyned*, that is the matter which it containeth; *as an acceſſory followeth the nature of its principal*: and Acceſſories, ſay the Lawyers, are extinct, if you deſtroy the Principals.

SECT.

Sect. VIII.

The *last Case* is of Solution of the Bond *by Relaxation of a party*; to wit, of him to whom the oath was made: as if *Caius* should promise any thing to *Titius*, whether *Titius* remitting the obligation, *Caius* be absolved of his promise? Where the first thing to be observed is, that this kinde of speech *To remit an Oath*, and the other which resembleth it, *To favour a man of his oath*, are not alwayes taken by good Authors in the same sense. For sometimes they are used in relation *to an oath to be made*, and so he is said to remit an oath unto another, or to favour him of his oath, who the other being prepared to swear, contented with his good will, waveth his oath, and crediteth him without it; or for any other reason requireth not an oath from a person of whom he hath right to require it. But for the most part they are taken with relation *unto an oath made*, and so he is said to remit or favour a person of his oath, who pardoneth the performance of that which the person had promised, nor though he have

right

right to doe it, requireth the thing due by vertue of that oath. So *Suetonius* ſaith, that *Tiberius favoured a Roman Knight of his oath, ſuffering him to put away his wife taken in Adultery with his ſon in law, though he had ſworn never to repudiate her.* And the Emperours *Antoninus*, and *Verus*, ſignified to one *who had ſworn never to be of the order, and yet was created* Duumvir, *that they favoured him of his oath.* And this is that remiſſion or favouring of an oath which Caſuiſts call *Relaxation.* Whereof I ſay *firſt*, that this Relaxation taketh place in Oathes, Leagues, Bargains, and other humane Contracts, not ſo in Vows. The reaſon of this difference is, becauſe vows are made unto God as a party, but man hath power to remit thoſe only which are made to man. *Secondly*, I ſay, if an oath be ſworn in favour of another, that is in order unto his honour, power, profit, or other convenience, that it is not binding, except he in whoſe favour it is made, accept, and ratifie the ſame. As in our Law, a bond obligeth not *Caius* to pay an hundred pounds unto *Titius*, though ſigned with the hand of *Caius*, and ſealed

ſealed with his ſeal; except *Caius* deliver it unto *Titius*, and *Titius*, or ſome other accept of it, in his name, and to his uſe. *Thirdly* I ſay, an oath ſo made, if the perſon unto whom it is ſworn confirm the ſame, and expect the performance, cannot be relaxed by any third perſon. The reaſon is, becauſe no man can take away right acquired unto another, without conſent of the party. Whence it followeth, that the obligation (as we have formerly ſaid) of an oath cannot be taken away by diſpenſation, except the party be willing. *Fourthly* I ſay, if he to whom the oath is ſworn remit it, and would not have it be kept, that the party ſwearing is forthwith abſolved, and no more obliged in conſcience to perform the thing which he had promiſed. Wherefore *Caius* being ſworn to pay *Titius* an hundred pound, if *Titius* afterwards remit the debt, he is no farther bound by his oath. The reaſon is, becauſe any man may recede from his own right, and pardon a debt due unto himſelf, and the debt being abſolved, it muſt needs follow, that the obligation ceaſe, ſeeing ſolution

lution of the debt is the period of obligation, as appeared by the definition of the ſame, and amongſt us by the form of a bond, the conditions whereof performed, the bond becometh void, and of none effect. If you object that the debt is not abſolved, becauſe the promiſe is not performed. I anſwer, it is the ſame to all intents and purpoſes of the Law, whether it be really fulfilled or acknowledged by the party whom it concerneth as fulfilled. The reaſon is, becauſe the *acceptation* of the perſon intereſſed, is interpretatively *payment*: and ſo, the matter as it were ceaſing, the obligation ceaſeth, much after the manner whereof we have ſpoken in the foregoing Caſe. And this is that which Lawyers call *Acceptilation*, by which (though a *Civill Solution*, and not real) they affirm obligation to be no leſſe taken away then by the reall. If again you object, that although the obligation made to man might be taken away, by Relaxation, yet it ſeemeth the obligation to God ſhould remain, as was anſwered in caſe of an oath extorted by fear. I anſwer that the bond relaxed,

after

after the manner expreſſed, doth no injury unto God in the violation of an extorted oath, becauſe a promiſe made in favour of another, is only directed unto God as witneſſe of the promiſe made unto man, and revenger of the violation of that faith which is engaged unto the other; which faith ſeeing he violateth not, but fulfilleth his promiſe, he is wholly abſolved from all obligation, both towards God and man. *Fifthly* I ſay, that ſolution of the Bond by Relaxation of the party, extendeth ſo far as pleaſeth the party relaxing. As if *Caius* have ſworn to pay *Titius* an hundred pounds, and *Titius* have afterwards remitted fifty pounds, the obligation is not wholly abſolved, but *in part*. That is, the bond as to the fifty pound remitted is void, but it remaineth good as to the fifty pound not remitted. Again, if *Caius* have ſworn to pay *Titius* an hundred pounds within 20 dayes, and *Titius* perceiving that *Caius* cannot without inconvenience unto himſelf pay the mony at the time appointed, give him other twenty days: This Relaxation made by Dilation, or propagation of the time

time, remitteth ſo much of the obligation, that he is not bound to pay the money within the time limited, by his oath; yet he is bound, and that by vertue of his firſt oath, to make payment within forty dayes. *Sixtly* I ſay, that Relaxation by a party is of force, ſo far as that party is concerned, but is not of force to the prejudice of a third perſon. The reaſon is, becauſe any man may by act remit, as much of his own right as he pleaſeth; but no man can diminiſh the right of another, without his knowledge and againſt his will. Let men therefore ſo recede from their own, that the rights of others receive no detriment. Thus *Abraham*, *Gen.* 14. receded from his right, when after the victory won upon the four Kings, he beſtowed his whole ſhare of the ſpoyl upon the King of *Sodome*, reſerving unto the three Commanders, his fellows in arms, their due proportions. Whence *Caius* ſworn to pay an hundred pound unto *Titius* and *Julius*, if *Titius* pardon him his part of the debt, he is abſolved as to that which was due unto *Titius*; but remaineth bound as to that which is due unto *Julius*. Upon the ſame

ground *Relaxation* by consent of the *parties* availeth nothing in *Contracts of Marriage*; because therein mans profit is not regarded only, but the Ordinance of God also, to whom great injury would be done, if that contract though with mutuall consent of the party should be violated. For the vertue, and and efficacy, which this Relaxation, whereof we now speak, hath to null obligation, supposeth that act which introduced obligation, to have considered nothing else but the good, and profit only of the party relaxing. If any other party be by right of his own interessed, that the obligation should not be remitted, the obligation is not remitted.

Sect. IX.

NOw the sum of what hath been said concerning *Solution of the Bond in an Oath* is briefly this, That the Bond of an Oath cannot be released by *Dispensation* of any Superiour, or *Commutation*, so as to free the Conscience of the party swearing from performance of

of the promise: but may nevertheless be *rescinded* and made void by a Superiour having lawfull authority, cease through defect of the matter; or be *relaxed* by him unto whom the promise was made, so as to lose all strength of obligation. The promise which I made at my entrance upon the Office of Publique professor, being now (by Gods assistance) performed, according to my talent, with as much brevity, perspicuity and fidelity, as I have been able; I thought fit to adde some few admonitions *concerning the use and abuse of Oathes*, as Corollaries, whereby our lives, and Consciences may be profitably directed, not by way of exhortation, as they use in Sermons, but remembring I teach in the School, and not in the Church, by way of Thesis, or practicall Conclusions, briefly proposed, and clearly explained.

Sect. X.

THe *first Conclusion* is against Anabaptists and Socinians, *That the use of Oathes is lawfull.* I prove it *first* by

the practise in the Old Testament. The godly Patriarchs sware; Controversies were determined by oath according to the Institution of *Moses* in the Law; the Prophets prescribed the condition of oathes to be observed. Nor can any just reason be rendered, why this should be lawfull for the pious under the Old, and not for the faithfull under the New Testament; seeing it is apparent from the end of an oath, whose use is perpetuall, that it appertaineth not unto the Ceremoniall Law abrogated by Christ; and from the form which seemeth to have nothing common with the type. I prove it, *secondly*, by the example of God, of Angels, of Apostles: those being often introduced in holy Scripture, swearing after the manner of men, these Historically. *Thirdly*, by the custome of all Nations, who directed by the light of Nature, have judged the bond of an oath for the convenience of Civill Society, the surest confirmation of Faith, then which there can be no clearer discovery of the Law of Nature. *Fourthly*, from the end of an oath, which is the confirmation of truth in doubtfull matters, where

all

all other proofs are deficint; which end ſeeing it is neceſſary for the compoſing and determination of Controverſies, it muſt needs be that the neceſſary means unto the end, ſhould be at the leaſt lawfull. *Fifthly*, from the nature of an oath containing nothing in it ſelf which is intrinſecally evill; for neither is a *religious act* evill, nor *the Confirmation of a doubtful thing* evill, nor *Invocation of Divine teſtimony* evill; of which members the eſſentiall definition of an oath conſiſteth.

Sect. XI.

THe *ſecond* Concluſion, *The uſe of Oathes in common diſcourſe is unlawfull.* The *firſt* proof is from the nature of an oath, Becauſe every religious act being a part of Divine Wotſhip ought to be performed with due reverence, and with ſome both preparation and attention; all which muſt needs be far off, when oathes are raſhly ſcattered without judgement, or heedleſly without conſideration. The *ſecond* from the end, which is the confirmation of a

doubtfull buſineſſe, ſeeing our ordinary diſcourſe is for the moſt part upon frivolous matters, which either are not doubtfull, or not of moment to require religious confirmation; or if they were, would be little more credited for his oath, who maketh ſwearing his common cuſtome; for ſuch will be aſſoon believed, if that which they ſay ſeem true, without an oath, or if otherwiſe, no whit the ſooner for ſwearing. The *third* from the Cauſe whence ſuch kinde of Oathes are derived; which is either a vitious habit contracted by long and pernicious cuſtome; which habit is the fruit, and mark of a profane, if not Atheiſticall heart; or ſome exorbitant perturbation of the minde, as exceſſive anger, intemperate joy, with which whileſt the minde boyles, the mouth foameth to the diſhonour of God; and at which thoſe words of *James* ſeem peculiarly to aim; Chap. 5. verſ. 12. *But above all things, my Brethren, ſwear not, neither by Heaven, neither by the Earth.* In the foregoing verſes, he exhorteth the faithfull to ſuffer injuries with patience, and in the following verſe teacheth the Chriſtian

ſtian how to entertain himſelf whether he be ſad or cheerfull: a place worthy to be the exerciſe of learned men, and ſomething more diligently conſidered, then as yet it hath been by Interpreters. Perhaps this curſory Paraphraſe upon the words ſuch as it is may contribute ſomething towards that end; as it ſeemeth unto me they expreſſe thus much. *Set the examples of antient Prophets and holy men before your eyes. If ye ſuffer adverſity, imitate their patience. If in all things you cannot attain to that perfection, yet thus far at leaſt, except ye be extreme negligent, you may goe with eaſe, above all things, take heed leſt too impatient of your grief, or too much tranſported with your joy, ye break forth into raſh oathes, to the diſhonour of God, and ſhame of Chriſtian converſation. But rather contain your ſelves, whether troubled or rejoycing, within the bounds of modeſty; mingle not heaven, and earth: let not all things be filled with your oathes and clamours; if you affirm orderly a thing, let it be with calmneſſe, and a meer affirmation, or negation: But if either of theſe paſſions be more impetuous, and ſtrive to overflow the narrow channels of your boſomes, it will be your wiſdomes to let it forth unto the glory of*

God. Doe you demand by what means? I will tell you: Is any amongſt you afflicted? *Let not his impatience break forth into oathes and blaſphemies, the floodgates of wrath; but rather let him pray, and humbly implore God that he would vouchſafe him patience, till his heavy hand be removed.* Is any merry? *Let him not bellow it forth in Oathes, like a* Bacchanalian, *but rather ſing it in Hymnes and Pſalmes unto the praiſe of God; who hath made his cup to overflow, and crowned him with happy dayes.* If any man admit not this latitude unto the Apoſtles words, let him uſe his own judgement. I have onely expreſſed that which I think probable, and give no man Law. But to return, if I have digreſſed; it is certain that the words of *James* altogether condemn that evill cuſtome, which is now grown amongſt high and low, men of all ſorts inveterate. It would coſt me many leaves to ſum up that which hath been declared againſt this impious uſe by holy Fathers, ancient Doctors of all Nations, *Hebrews*, *Greeks*, *Latines*, yea even *Heathens*; of many take a few: *Sirach* the wiſeſt of the *Hebrews*,

Hebrews, *Accustome not thy mouth to swearing*: *As a servant that is continually beaten, shall not be without a blew mark, so he that sweareth, and nameth God continually, shall not be faultlesse. A man that useth much swearing shall be filled with iniquity.* Amongst the *Greeks*, *Eusebius* the Heathen Philosopher, *Many* (saith he) *exhort men to swear the truth, but I am of opinion that men ought not easily to swear at all.* Amongst the *Latines*, *Augustine*; *Beware of oathes as much as you may, because it were better not to swear, though a truth; not that it is sin to swear truth, but that it is a most grievous one to swear falsehood; into which he may the sooner fall, who accustometh himself to swearing.* And in another place, *a false oath is destructive, and even a true one dangerous.* But what need is there of other testimonies, seeing this dayly and unnecessary use of swearing is so positively forbidden, as scarse any thing more in holy Scriptures; by Christ himself; *But I say unto you swear not at all*; and by his Apostle St. *James*, in the place cited, *Above all things swear not.* Mat. 5. 34.

SECT.

Sect. XII.

THe *third* concluſion, *An oath ought not to be made but upon a juſt, weighty and neceſſary occaſion.* An oath is of thoſe things which are neither *evill* in *themſelves*, as murther, ſacriledge, perjury, and all other vices be; nor of thoſe which are *deſirable of themſelves*, as deeds of Charity, Juſtice, Obedience and all other vertues; but of ſuch as are *good* only *becauſe neceſſary*, by Hypotheſis, and for their end, and not deſirable, but in order unto that end, of which ſort are all thoſe which are ordained for the redreſſe of ſome defect, as Phyſick. For as a *medicine* was not invented for it ſelf, but for health; and as there would be no uſe thereof, if mens bodies were not obnoxious unto diſeaſes, (*Honour the Phyſitian for neceſſity ſake:*) ſo an *oath* is inſtituted for the confirmation of faith amongſt men; nor would be of any uſe, if mankinde were not alaſſe too ſubject unto ignorance, and perfidy; which

which perhaps was our Saviours meaning by those words, *Matth.*5.37. *cometh of evill.* Wherefore as the use of Physick, where it seemeth not necessary to the preservation of life and health, is to be avoided: so oathes are likewise to be avoided where necessary preservation of humane society, and confirmation of faith seem not to require them. That admonition of *Epictetus* (as all the rest of that Stoick) is wholesome, *Avoid an oath, if you can, wholly: if not, as much you may.* An oath is a sacred thing, but by how much the more sacred, by so much the more dangerous, if unduely taken. As medicines of the greatest vertue and efficacy are the more hurtfull unto the body, if rashly and unskilfully administred. The use of *assertory oathes* is necessary in Common-wealths, especially in Courts of Justice, for the investigation of truth in matter of particular fact, whereunto belong oathes, witnesses, Compurgators, *&c.* In extrajudiciall and private businesses, it is not so frequent, yet it may be sometimes necessary; to wit, where it concerneth

concerneth a man very much to be believed, and he cannot be believed except he ſwear. The *promiſſory oath* is of no uſe in Juſtice, but of very great in extrajudicials, both publique and private. Firſt *publique*, to keep ſubjects in allegiance unto their Princes; for the confirmation of Leagues and Contracts of Kings and Commonwealths; for the obſervation of Laws, and Statutes; and conſequently honor, order, and peace of politique bodies, and Societies; for the faithfull adminiſtration of publique Offices, and the like. And alſo *private*, as the Antients often uſed it, for eſtabliſhment of Contracts; performance of Conditions between buyer and ſeller; payment of debts; reſtitution, loans, profits, truſts, *&c.* But in moſt matters of private concernment, other wayes may be taken with leſſe ſcruple of Conſcience, and better aſſurance againſt the perfidy of wicked men: as Pawns, Feoffees, Bonds, Witneſſes, and other judiciall obligations. And where ſuch may be conveniently uſed, it is beſt to abſtain altogether from oathes;

leſt

leſt by frequent ſwearing, and upon ſlight occaſions, the too familiar uſe of a thing ſo ſacred degenerate into contempt; or whileſt we practiſe ſwearing, we learn perjury. *Auguſtine* ſaith truly; *Except a man have tryed, he cannot know how hard a thing it is to ſhake off the cuſtome of ſwearing; and not to doe that raſhly, which ſometimes he muſt doe neceſſarily.*

Sect. XIII.

THe *fourth* Concluſion; *It is a grievous ſin, unduly to exact an oath.* Now he exacteth unduly, *Firſt*, who compelleth another to take an oath, which is neither ordained by the Law, nor received by cuſtome, nor eſtabliſhed by undenyed preſcription, without Intermiſſion. *Secondly*, who exacteth an oath evidently repugnant, or which ſeemeth by that ſenſe, which the words bear, according to their uſe in common ſpeech, to be repugnant unto a former oath lawfully taken. *Thirdly*, who compelleth another to ſwear

ſwear unto an unlawful thing; to wit, againſt his duty to God, to his Superiours, againſt the Laws of the Kingdome, againſt a good life. *Fourthly*, who offereth an oath of ambiguous ſenſe, or any way captious; thereby to enſnare the conſcience, life, liberty, or fortune of his neighbour. *Fifthly*, who without neceſſity either terrifieth any perſon by threatnings, compelleth him by authority, or inveigleth him by perſwaſion; example, deceipt, or other means to an oath, which he knoweth to be againſt the Conſcience of that perſon. Would to God all ſuch as are in Authority would ſeriouſly conſider with what a foul and indelible brand, *Jeroboam the ſon of Nebat* hath ſtigmatized his name and Conſcience, in cauſing the people of *Iſrael* to ſin, and how grievouſly they provoke the Lord to wrath, who abuſe the power he hath given them for the edification unto the deſtruction of others.

SECT.

Sect. XIV.

THe *fifth* Concluſion; *An Oath is not to be taken with a relucting and unſatisfied Conſcience.* The *firſt* proof, becauſe *that which is not of faith is ſin.* The *ſecond*, becauſe we ought to ſwear *in Judgement*: which certainly he doth not who goeth againſt the judgement of his Conſcience. The *third*, becauſe ſuch an action muſt needs be occaſioned by regard had unto ſome temporall advantage, or fear of ſome loſſe, or hope of ſome profit, or deſire to obtain favour, or the like. And how ill doth it become a Chriſtian to prefer the world before God, durt before heaven, the body before the ſoul, temporall gain before eternall joy, the follies of this before the hopes of eternall life, externall peace before the quiet of Conſcience? The *fourth*, becauſe the party ſo ſwearing evidently expoſeth himſelf to the danger of perjury. For he who through fear, or hope

hope of any temporall losse or gain, may be induced to swear, will hardly if the like fear or hope disswade, be induced to perform his oath, and yet Heathens themselves have numbred perjury amongst the most hainous crimes, which kindle the anger of the immortall Gods; not against the guilty only, and their posterity, but even to the destruction of whole Nations. How much more ought wee acknowledging the only true God, who hath solemnly professed that he will not hold him guiltlesse that taketh his Name in vain, to fear and tremble, lest whilest we behold on every side the plentifull and luxurious crop of Oathes and Perjury, grown already ripe for the Harvest, God the most just Judge, to the utter destruction of so perfidious and profane a generation, should instantly thrust in the sharp sickle of his judgements? We have already been sensible that our most mercifull Father is provoked unto wrath, and his infinite patience wounded and (as I may say) overcome with our intolerable wickednesse, con-

converted into fury. Where all are extream, it is not eaſie to ſay for what particular crime. Yet certainly he who ſeriouſly conſidereth how far we have been, ſince God hath ſmitten us with a more heavy hand, from bewailing thoſe moſt grievous ſins of oaths and perjury, nay rather how vaſtly they are encreaſed, here through the uncontrouled, and unpuniſhed licentiouſneſſe of oathes and blaſphemies, there through the foul Hypocriſie of perjury hid under the ſpecious pretence of Religion, cannot chooſe but think upon thoſe words of the Prophet *Jeremiah*; *Through Oathes the Land mourneth.*

Wherefore Men, Fathers, and Brethren, I beſeech you as many as are here preſent, and all, whereever they be, who wiſh well unto the publique peace of this Church, and Kingdom, or to the private of their own ſouls, and Conſciences, that we take moſt diligent heed, leſt we fall into contempt of Gods moſt holy Name, and violation of our own faith; that

we flye all unneceſſary Oathes, conſtantly refuſe thoſe which are unlawfully required, faithfully perform thoſe which we have lawfully taken, as far as is in our power, couragiouſly reſtrain the licentiouſneſſe of ſin in oathes; and continually implore our great and good God, that he would give us (being taught by his correction, and humbled under his moſt powerfull hand) hearts to flye unto his mercy, to acknowledge his Juſtice, to implore his grace, for the remiſſion of all our ſins, amendment of our lives, and ſalvation of our ſoules, by and through the merit of our Lord Jeſus Chriſt; to whom with the Father, and the holy Spirit, three Perſons, and one God, be the Kingdome, the power and the glory, for ever and ever. *Amen, Amen.*

FINIS.

An exact and large Table, of the moſt remarkable things contained in this Book.

The Number denotes the Page.

ABraham's *league with* Abimelech 163
Acceſſaries extinct by the principal ceaſing. 249
Act of an Oath implies reverence of the Divine Name. 8
Adviſement to be took before one ſwear. 206
All obligation to duty, reſpecteth duty de futuro. 30

Any man may recede from his own right. 252
Asseverations, Attestations, and Oathes differ. 164
Assuerus *his oath to* Esther. 96

B.

Bond of an Oath is indispensable. 234. 247
By my faith, and by my truth, are oathes. 167. 175

C.

Childrens oaths. 109
Christ generally forbids unnecessary oathes. 171
Commutation of an oath is unlawful. 242.
Confirmation the true end of an oath. 13
Conscience to be preferred to fear of punishment. 27
Cydias *his oath.* 240

D.

Davids *oath touching* Nabal. 19
Debts twofold. 25
Definition of an oath.
Dictates of conscience, binde us not to act against it. 84

Difference

Difference between an oath and a vow, 10. *between an oath and an assertion.* ibid.
in Doubtful matters the safest part is to be taken. 53
Doubting of an oath. 223
Drunken mens oathes. 111. *it is unfit for them to swear.* 112
Duty of subjects perpetually obligatory. 246

E.

Efficient cause of an oath twofold. 105
Egyptians *oathes.* 157. 170
Enraged mens oathes. 111. *it is unfit for them to swear.* 112
Error in the substance makes the oath invalid. 134
Every oath is in its nature binding. 30
Evill can receive no validity from an oath. 76
Exceptions and conditions to be presumed in oathes. 54
Excessive curiosity of method to be avoided. 65
Extent and latitude of an oath. 215

F.

Faith and justice, firm bonds of humane society. 14.

Final cause of an oath. 16. 218
First and second intension of an oath. 216
Force of words. 167
Formes of oather. 149
Formes of words. 165

G.

God swearing. 21
God chiefly called for a witnesse in all oaths 8.
especially in true and formal oathes. 9
God is invocated in all oathes. 10
God not to be invocated as witnesse, but in doubts worthy his vindication. 93

H.

Hannibals *oath.* 108
Habit of swearing. 220
Heirs of the party swearing, how far bound by his oath. 126
Herods *oath.* 4. 19. 97
He that swears by Idols, swears by them he thinks to be Gods. 9
How to know whether a man have sworn or no. 163

I.

Jacobs *covenant with* Laban. 163
Jesuites defend Æquivocation. 194
Impossible things oblige not. 60. *things may be impossible three wayes.* ibid.
Impulsive causes of oathes. 130. *they are twofold.* ibid.
Intention of the party how to be judged. 130
Intention frees not a man from perjury. 224
Internal formes of oathes. 188
Josephs *oath.* 169
Joshuas *oath.* 19. 132
Irritation of a lawful Superior, cancels the bond of an oath. 247
Judahs *oath to* Thamar. 219

L.

Law twofold. 23
Lawful power required in an oath. 206
Lawful to swear to an Infidel. 122

M.

Madmens and fools oathes. 109
Manichees *did swear frequently by the creature.* 159

Matter of an oath either indefinite or definite. 66
Mentall reservation in oathes. 198
Minde and intention of the party swearing. 176

O.

Oathes of those who are not in their owne power. 115. *without his consent in whose power they are.* 117
Oathes made to Infidels ought to be kept. 122.
Oathes are personall bonds. 127
Oathes obtained by fraud. 132
Oathes extorted by fear 135. *by a slight fear* 136. *they bind.* ibid.
Oathes made to Theeves are binding. 138
Oathes by signes without words. 151
Oathes by the creature 153. *are unlawfull* ibid. *it is good to abstain from them,* 157
Oathes made by Idols 160. *are double sin.* 161 *yet they are obligatory.* 162
Oathes according to the custome of the countrey. 174
Oathes given to Princes. 183
Oathes of Allegiance taken by Jesuites. 200
Oathes of Allegiance. 73

Oathes upon condition. 215
Oathes in complement. 221
Oathes religious acts. 6
Oathes ends of all contradictions. 13
Oathes are the greateſt humane faith that can be. 15
Oathes aſſertory and promiſſory. 17
Oathes invoke God both as a witneſſe and a Judge. 21
Oathes oblige the conſcience. 29
Oathes inſtituted of God. 45
Oathes make not former Obligations void. 58
Oathes of things ſimply impoſſible, are not obligatory nor lawfull. 66
Oathes againſt the law of a community. 80
Oathes of things which the parties ſwearing think to be unlawfull. 82
Oathes impeditive of ſome future good. 86
Othes tending to ſome ones hurt. 88
Oathes giving ſcandal hinder them not from binding. 92
Oathes in caſes indifferent both lawfull and binding. 93
Oathes binde in the matter of leaſt moment. 94
Oathes of homage and Supremacy. 98
Oathes of members of Communities. 99
Oathes are of thoſe things which are not evill in

in themselves, 264. *nor desirable*, ibid. *good because necessary.* ibid.
Oathes not to be taken with reluctancy, nor an unsatisfied conscience. 269
Object of an oath is a doubtful thing. 11
Obligation what it is. 23. *it is twofold.* 26
Obligation of conscience, ariseth precisely out of the debt of duty. 27
Obligation of an oath is stricti juris. 48. *tempered with equity, but not corrupted with favour.* 49

P.

Paulus Cortesius, *and* Peter Bembo *too much affected to elegancy.* 35
Perjury is of three sorts. 38
Perjury not taken away by any kinde of simulation. 41
Philosophers and Divines are not to affect oratory. 36
Pomponius *his oath.* 140
Promissory oathes. 17. *under them Comminatory oathes are comprehended.* 19. *what difference between them and Assertory oathes.* 29. *to be understood in that sense as the party to whom the oath is made intendeth.* 209
Proper matter of an oath. 15

Proper obligation of a promiſſory oath. 31

Q.

Qualities required in one who deferreth an oath. 120

R.

Rational judgement required in an oath. 106
Relaxation freeth a man from his oath. 250
availeth nothing in contracts of Matrimony. 256
Religion of an oath alwayes held moſt ſacred. 7
Regulus *his oath.* 123
Rights of Rulers over their ſubjects perpetual. 246
Rights fitting to be in Divine worſhip. 180
Rites of the Old Teſtament all alike lawfull or unlawful. 181
Romans oath. 170

S.

Senſe of an oath how to be taken. 190
Silences ſworn to Theeves. 144
Simplicity becometh an oath. 37. *to which two kindes of ſimulation are repugnant.* 39

Simulation is againſt the third Commandement. 47
Single and double truth. 228
Sins againſt the Conſcience are grievous. 83
Solemne rites of oathes. 178
Solemnity of the act aggravates the ſin of an oath. 183
Some things require a milder interpretation. 51
Some legall rites of ſociety appertain even to theeves. 140
Solution of the bond of an oath what it is 229. *proper to a promiſſory oath.* 227
Solomons *oath to* Bathſheba. 96
Speech of ambiguous and indefinite ſenſe, before it be diſtinguiſhed, is no propoſition. 212
Spontaneous oathes forbidden unleſſe it be upon neceſſary and weighty occaſions. 131. 307
Summary of what is contained in the book. 3
Superfluous things not to be put in definitions. 10

T.

Tacite antecedent conſent. 118. *ſubſequent.* 119
Things cannot by their mixture produce a new ſpecies, without ſome reall immutation. 24

Things unlawful ex accidente. 82
Two swearing mutually. 125
Twofold obligation may arise out of an oath. 143

U.

Verball forms of oathes. 163
Verball equivocation in an oath. 192
Unlawfull things oblige not. 53. 61
Unlawful things several wayes. 76
Unlawfull things secundario. 78
Unlawfull oathes to be refused, even to danger of life. 121
Unlawfull to promise any thing to an evill intent. 218
Undue exaction of an oath is a grievous sin. 267
Vows made to God, and oathes to men are the strongest of all obligations. 29
Use of oathes lawfull. 257. *in common discourse unlawfull.* 259
Use of promissory oathes in justice. 266

W.

What ought not to be performed, ought not to be sworn. 63
What truth is required in a promissory oath. 227

What is not of faith is sin. 269
What are not fit matters for oaths, 12. *what are.* ibid.
Who swears by the creature, doth it some way in relation to God. 9
Whosoever is obliged, is obliged to another. 58
Why an oath called Sacrament. 7
Will cannot be forced. 142
Words are interpreters of things conceived in the minde. 150

FINIS.